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In the Circuit Court of the United States at Chattanooga,
Tennessee, April Term, 1895.

W. R. AMICK, PLAINTIFF,

vs.

JAMES E. REEVES, DEFENDANT.

ACTION FOR LIBEL.

Pleadings in the Cause.

Arguments of Counsel.

Charge of the Court.

Reported by MISS JULIA AKERS, Stenographer.



IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE SOUTHERN DIVISION OF THE EAST-
ERN DISTRICT OF TENNESSEE.

W. R. AMICK
vs.
JAMES E. REEVES.

DECLARATION.

The plaintiff, who is a citizen and resident of the State of Ohio, sues the defendant, who is a citizen and resident of the Eastern District of the State of Tennessee, for twenty-five thousand dollars damages, for that, whereas, heretofore, to-wit: the second day of August, 1893, the said defendant falsely and maliciously wrote and published in the Chattanooga Daily Times, a newspaper published at Chattanooga, Tennessee, the following libelous matter and words of and concerning the plaintiff and in relation to his profession, which is that of a physician, in which profession he is in good and regular standing, viz :

"Chattanooga, August 2nd, 1893.

"*To the Chattanooga Times.*

"The open court which you have established in the Times is most opportune, for there is pressing necessity that the light shall be turned on in full force to show up the truth concerning Dr. Amick's so-called cure [plaintiff being the person referred to as Dr. Amick] for consumption, which has so strangely won your personal attention.

"We have before us a medical question—an issue in which your indorsement is wholly worthless; for the reason that you are a newspaper, not a learned physician capable of striking the difference between the methods of medical quackery and the necessary painstaking labors in formulating medical truth.

"The methods employed by Dr. Amick are plainly those of the most brazen faced quacks. In proof see his forty-page pamphlet, setting forth the virtues of his 'chemical treatment.' On an initial

page he gives the following racy morsel: 'The wise doctor knows a good thing when he sees it, therefore we need not urge him to be early in the field with this new treatment.' The same publication tells further that The Amick Chemical Company—a brace of congenial spirits in affectionate embrace—is an incorporated concern with a paid up capital stock of \$300,000. Is that the way for scientific inquiry? Is that the way of a reputable physician in discharging his duty to society and obligation to the profession which gave him honor and standing among men?

"From first to last of his forty-page pamphlet, sent out to catch the pockets and last hopes of the sick and dying, there are not to be found a half dozen cases of undeniable tubercular consumption. The testimonials are cunningly stated, but when read by the intelligent physician they are meaningless and therefore utterly worthless in the discovery of medical truth.

"If Dr. Amick had been moved by a spirit of true scientific inquiry he could have found in the city of Cincinnati ample opportunities for convincing the whole world of the value of his 'chemical treatment.' There, at his own home, he could have had in the great Cincinnati Hospital sufficient clinical material to prove the truth of his assumption, and an audience of the great men of that city to either indorse or condemn his claims. Instead, he has appealed to a far lower court of inquiry—to the secular newspaper press, and based his claims of a wonderful medical discovery upon "drowning men catching at straws," and the certificate of fifth-rate doctors throughout the country—all for the purpose of money getting. Is it not surprising that he should have to come to Chattanooga to obtain his best indorsement—the testimonials of Drs. Holland and Hunt, with McReynolds thrown in for good measure?

"But you have said the use of the City Board of Health's name was "a mere technicality." Like John Brown's body, and old man Council's certificate though he has been dead for three years, of the curative virtues of a Texas fraud for consumption, the certificates of Hunt and Holland will keep marching on, though every one of the illustrious "eleven test cases" shall have proved fatal.

"Dr. Amick gives his treatment free for the first ten days, after that the price is \$10 per box of medicines. Is this the way Dr. Jenner gave his blessing to the world when he discovered vaccination as a preventive of smallpox? Did he rob the sick by false promises? [Meaning that plaintiff had robbed the sick by false promises.] Did he pay for newspaper puffs of his discovery to secure patronage? Nay, verily. He challenged the most searching examination of the truth of his statements by men capable of judging his claims.

"With but three or four exceptions, all the testimonials in Dr. Amick's pamphlet say the cases were consumption, because cough, expectoration, hemorrhage in some cases, night sweats, loss of appetite, and wasting of flesh and strength were the symptoms, "merely this and nothing more."

"Every intelligent physician knows that something else is required to prove beyond a doubt that the case is one of tubercular consumption. And this is the answer to the assertion that George Golston and Mrs. John H. Springfield were cured of tubercular consumption by the use of "Dr. Amick's chemical treatment." The free treatment for ten days is to decoy the trusting patient to have him or her make subsequent remittances of \$10,—the oftener repeated the better for Amick.

"When Dr. VanderVeer, of Albany, N. Y., asked me the other day if "any really strong man in the profession in Chattanooga had given this treatment indorsement," I went to Dr. Holland, President of the City Board of Health, for an answer. He frankly admitted, in the presence of Dr. Stapp, that a bacteriological examination of the cases had not been made. I then offered to go with him to see the patients and make a careful microscopical examination of the sputum in each case, and give him the microscopical slides—all free of charge, but he thought this care "not worth while."

"I replied, 'your experiments will be worthless unless you can give the microscopical proof—the presence of the specific bacilli—that the cases you have under treatment are tuberculous.'

"Not to mince words, Drs. Hunt and Holland make no pretense of microscopical technique, neither have they called to their aid a competent bacteriologist in their studies of the cases you have given through your columns as wonderful cures; therefore, their testimony is worthless. And would you, if you were charged with a scientific inquiry, select men who are not familiar with the demands of science in the search for truth?

"Drs. Sims and Wise have a genuine case of tubercular consumption under observation, in which the poor sufferer, on his own responsibility, is following Dr. Amick's advice to the very letter.

"About six weeks ago this patient came to my office to have me examine his expectoration, to see if he had consumption or not.

"His sputum was loaded with tubercle bacilli, and I advised him to go as quickly as possible to Walden's Ridge, where so many consumptives have been benefitted by the good climate and pure water. After his visit to my house, Dr. Amick caught him, and advised him to stay at home in Chattanooga. [Meaning thereby that plaintiff, who was referred to, had been guilty of unprofessional conduct and malpractice in his profession for the purpose of making money from the patient referred to.] Last evening I visited him with Dr. Wise. His expectoration is swarming with luxuriant tubercle bacilli, while every symptom is much worse than when I saw him six weeks ago, notwithstanding his sixteen days' faithful trial with the wonderful cure for consumption.

"The good name of the Chattanooga Times requires that the truth, the whole truth, and nothing but the truth, shall go out to its thousands of readers, regardless of advertising patronage.

"Through its order a "ten days" supply of the Amick plan of treatment has been delivered to me for fair trial, and I intend to make use of it on the first case I find willing to accept the plan. I here give notice that when I begin the test case I shall summon several of our ablest physicians to observe with me the result. Every particular shall be recorded, and I

will be careful to select a patient that is not at death's door.

JAMES E. REEVES."

Plaintiff is, as aforesaid, a physician in good and regular standing, and was at the time of the said publication extensively engaged in the practice of his profession in many parts of the United States, among them Chattanooga, Tennessee, and vicinity.

He has acquired especial repute in the treatment of consumption, in which said treatment he uses and employs certain chemical combinations of great value and efficiency, known as the Chemical Treatment. Defendant is likewise a physician, engaged in the practice of his profession at Chattanooga, Tennessee. His intent, purpose and object in writing and publishing the said false and malicious communication was to advertise falsely to the public that plaintiff is a quack and an impostor and his said Chemical Treatment a worthless nostrum, and to thus greatly damage and injure the plaintiff in his person, property, profession and reputation.

By the said publication, so falsely and maliciously made by defendant plaintiff was and is greatly injured and damaged in his profession and reputation, and has been prevented from acquiring divers great gains which he might and would otherwise have acquired, and has been made to suffer and does suffer great mental pain and anguish, all to his damage twenty-five thousand dollars as aforesaid, for which he sues and demands a jury to try the issues, etc.

SECOND COUNT.—And the plaintiff sues the defendant, now in court, for other twenty-five thousand dollars, for that, whereas, heretofore, to-wit, the day of August, 1893, the said defendant, falsely and maliciously wrote and published of and concerning the plaintiff and in relation to his profession, which is that of a physician, in which profession he was then and is now in good and regular standing, by delivering to the Press, a newspaper published in Chattanooga, Tennessee, the following false and libelous matter and words, to-wit:

"If Dr. Amick were on trial for his life, I've got evidence enough to hang him. In all my experience I have never encountered such a bare-faced fraud as this.

"If I were to go to a newspaper proprietor and ask him to combine with me

to rob a bank, he would denounce me for it; but would not that be more honorable than a conspiracy, for pecuniary benefit, to rob the sick and dying men and women of the community?

"Take the cases in and around Chattanooga, who have taken the cure, and we find those who had consumption have died or will die soon, while one or two who never had tuberculosis at all are getting better. The pretended cure is a big humbug, a bare-faced fraud, and ought to be denounced without fear. The physicians who have . . . me give the plain lie to Dr. Amick's claim that they endorsed him, and they are among the most eminent members of the profession in the country."

Prior to the publication of the said libelous and malicious matter and words plaintiff had discovered certain chemical combinations and actions of great value and efficiency in the treatment of persons afflicted with consumption, and had been heretofore and was then using the said chemical combinations and actions which were then known as Amick's Chemical Treatment in the treatment of persons afflicted with consumption, in his practice as a physician in many and divers places in the United States, among them Chattanooga, Tennessee, and vicinity.

The defendant was at the time of the said publication, likewise a physician, practicing his profession at Chattanooga, Tennessee, and the intent, meaning and object of the said publication was to advertise and state falsely to the public that plaintiff was a quack (meaning a boastful pretender to medical skill, an ignorant practitioner of medicine), a humbug and impostor, and that his said chemical combinations for the treatment of consumption, known as the Chemical Treatment, was a mere worthless fraud, and thus to greatly damage and injure him in his profession and reputation, his person and property.

And plaintiff avers that by reason of the said false, malicious and libelous publication he was and is greatly damaged and injured in his profession and reputation, and greatly damaged by having his said chemical combinations, known as the Chemical Treatment as aforesaid, brought into disrepute in the estimation of divers persons and its reputation thereby greatly injured, so that he has been prevented from acquiring divers great gains which he might and would otherwise have ac-

quired, and has been made to suffer great mental pain and anguish, all to his damage twenty-five thousand dollars as aforesaid, for which he sues and demands a jury to try the issues, etc.

W. R. AMICK.

By H. M. WILTSE,
Attorney.

H. M. WILTSE, Attorney.

DEFENDANT'S PLEAS.

First Plea.—The defendant for plea to each and every count in plaintiff's declaration contained says that he is not guilty in manner and form as alleged therein.

Second Plea.—And for further plea defendant says that the publication declared on in each and every count of the declaration which is here referred to as if fully set out herein taken in its ordinary meaning, sense, acceptation and effect, is true in substance and in fact, and this the defendant is ready to verify.

Third Plea.—And for further plea defendant says that the publication declared on in each and every count of the declaration, taken in its ordinary sense, and as ordinarily understood and accepted and imputed to the plaintiff, was true in substance and in fact, and was believed to be so and published in good faith and without malice, and this the defendant is ready to verify.

Fourth Plea.—And for further plea to the first count of the declaration defendant says *actio non*: Because the plaintiff, at the time of the composing and publishing of the article or language declared on was, and for some time prior thereto, had been a physician in the city of Cincinnati in the state of Ohio, and on said date, and for a long time prior thereto, was and had been among other things advertising and publishing and causing to be advertised and published to the world through certain printed pamphlets and newspapers in the United States, and especially in the "Chattanooga Daily Times" referred to in the declaration that he, the said plaintiff, had recently discovered a new and most wonderful "Chemical Treatment" for the cure of consumption, and as one of the inducements for the use and adoption of his alleged cure, said plaintiff offered the rein to furnish his said treatment free of charge for the period of ten days, to

any person desiring the same, to be used as and for a test of the efficacy of his alleged remedy, and that after the expiration of said period said treatment would be furnished at a certain stipulated price.

And said plaintiff, by the claims made for his said treatment in the publications and advertisements aforesaid, and by reason of the alleged cure of certain divers and numerous alleged cases of consumption by the use of his said treatment, and also because of the alleged advantageous offers contained therein as aforesaid, was strongly appealing for public patronage in the use of his alleged new and successful treatment for the Cure of Consumption, and by reason thereof public interest in the said city of Chattanooga and in different parts of the country became, and was so great in respect to the claims of said plaintiff for his said treatment, that the said "Chattanooga Daily Times" established in said paper what it termed "An Open Court" for the free discussion of the alleged merits or demerits of said alleged cure, and all persons interested in the subject, and especially the members of the medical profession, were invited to freely discuss and express their views and opinions respecting the claims made by the plaintiff in relation to his new and wonderful treatment for the cure of consumption. The defendant at said time, and for several years prior thereto, had been a practicing physician in the said city of Chattanooga in good and regular standing, and in addition thereto defendant had been engaged in the active pursuit and practice of his profession for more than forty years, during the last seventeen years of which he has made Microscopy a particular study, and by reason thereof he is now and was at the date of the publication complained of specially fitted by education and experience for the proper diagnosis and treatment of tubercular consumption. And by reason of the facts aforesaid defendant composed and published the communication set out in said first court of the declaration. And defendant says that said publication did not bear or convey the defamatory meaning alleged therein, and was made in good faith, under a sense of professional and public duty and in a sincere spirit of scientific inquiry, without malice, and the same was in relation to and a fair and candid comment on a matter

then of great public interest and concern to the inhabitants of the said city of Chattanooga as well as throughout the entire country, to-wit: Whether the claims made by said plaintiff for his alleged new and wonderful treatment for the cure of consumption, as aforesaid, were in fact true or false.

Wherefore defendant says that by reason of the facts aforesaid said publication was privileged, and this the defendant is ready to verify.

DANIELS & GARVIN,
Attorneys for Defendant.

REPLICATION.

The replication of plaintiff to all and each of the defendant's several pleas.

The plaintiff, by way of replication to defendant's first plea, says he joins issue thereon.

And the plaintiff, by way of replication to defendant's second plea, says the publications declared upon in the several counts of his declaration are not, taken in their ordinary sense, meaning, acceptance and effect, true in substance or in fact.

And the plaintiff, by way of replication to defendant's third plea, says the publications declared upon in the several counts of his declaration are not, taken in their ordinary sense and as ordinarily understood and accepted and imputed to him true in substance or in fact, and were not believed to be so as published in good faith and without malice, as in the said plea alleged, but were published with the intent and meaning stated in the several counts of the declaration, and maliciously as stated, for the purposes stated.

And the plaintiff, by way of replication to the defendant's fourth plea, says he is entitled to maintain his action as in his declaration alleged and for the reasons alleged, and that the publications declared upon in the several counts of his declaration, and especially the first count thereof, did bear and convey the defamatory meaning alleged therein, and were not made in good faith, under a sense of professional and public duty and were not made in a sincere spirit of scientific inquiry, without malice, as in said plea alleged, and that the matter contained in said publication set out in the first count of his said declaration was not a fair and

candid comment upon the matter to which it related, and was not privileged.

And all of this the plaintiff prays may be inquired into by the country.

H. M. WILTSE, Attorney.

DEFENDANT'S REJOINDER.

The defendant joins issue on the second, third and fourth paragraphs of plaintiff's replication in the above cause.

DANIELS & GARVIN,
Attorneys for Defendant.

OPENING ARGUMENT.

H. M. WILTSE, ESQ.

If your Honor please, and gentlemen, I presume that my friends, the enemy, feel as if they had pretty badly demolished a certain branch of this case with their expert testimony; but I feel, on the contrary, as if they have simply developed the true inwardness of the publication which is complained of, or the publications. Now, Dr. Reeves is a friend of mine, and an esteemed friend, and, of course, I shall have nothing whatever to say which will, by any possible construction, have an unkind tendency; but in this matter his conduct is something that I shall be obliged to refer to very plainly. I believe he was actuated, not only by a degree of personal malice, perhaps an almost unconscious personal malice, but that he was actuated, also, by a species of malice which characterizes a very large per cent. of the medical profession, when a question of medical ethics is at stake. You heard frequent references made, in reading the depositions, to certain Medical Associations. It is known to the world to be a fact that these codes of these medical associations, their rules of conduct, are the Bible of the profession; or if Bible of the profession is making it too strong, then the Koran of the profession; I believe that would suit my purpose better, for I don't admit that they are entitled to be compared, their codes, to the foundation of our religion.

As has been shown, the Amick Chemical Company offered every opportunity to the people of this vicinity to investigate their treatment, investigate their methods, investigate their conduct. They did everything they ought to have been

expected to do, and they did some things which they ought not to have been expected to do, and which I think they acted unwisely in doing. One thing was, to allow Dr. Reeves to wheedle them or bulldoze them into this series of test cases, about which they have made so much hullabaloo. I think they have acted very unwisely in doing that. I think the better plan for them would have been to go along with the doctors that had been handling their treatment and do the best they could, and once in a while save a poor suffering mortal from death, perhaps arrest the disease, and once in a while prolong a life if they could, and if they occasionally lost a case, if they lost ninety out of every hundred, if ten out of a hundred were saved or benefitted, I think that the treatment ought to be lauded, not only by the medical profession, but by the community at large.

Think of the testimony of those people in Cincinnati, (whose names I do not remember, and it does not make any difference). Think of the testimony in regard to that man who said that he had to go to bed and could not work and was in bed for months, was spitting blood, considered himself almost like a dead man, and heard people remarking upon his condition, "Poor fellow, he hasn't got long to stay here;" and he went under that treatment; and then he said that in a certain number of months he was able to walk up to the top of Mount Adams, a steep incline, just as rapidly as anybody, and felt just as little ill effect as the soundest man would feel from the exercise. Then there was the case of that young lady, and three or four or five cases in which it is shown that this treatment has been beneficial, has been most wonderfully efficient. Now they come along with a lot of doctors who are essentially enemies of this treatment. Why every new discovery in the medical profession is denounced; every one. I do not suppose that my learned friend, Dr. Reeves, can mention a solitary great discovery in medicine or surgery but that has been made the text for the denunciation of the discoverer all over the world, wherever it was heard of. Why, he talked to them about Jenner. I think in his letter he refers to Jenner, who is supposed to have discovered the secret of vaccination as a preventive of small-pox. It is known to the whole world that Jenner was almost

crucified because, they said, he was too bold. A man who would make such a profession to the world was a lunatic, and, of course, a quack. When Harvey discovered the circulation of the blood, Harvey became a quack in less time than it takes the blood to circulate once. Harvey said "it does circulate," and he was denounced all over the world. And Dr. Koch was denounced all over the world when he claimed that he had discovered a remedy for consumption, a possible cure for consumption. And so it is all the way around. Every doctor who ventures a little in advance of his profession gets in front of an armed mob, almost, and they fire at him, and they persecute him, and they drive him out of the profession if they can, and they try to drive his remedy out of the profession. I do not see fit to ascribe to them any mercenary motives, but that will appear upon the face of the record. Of course, if a man discovers a remedy that is unusual, that the other doctors are not in possession of, he interferes with their business; he treads on their toes and they, very naturally, squeal, and they squealed here yesterday; and I was not at all surprised at the squeal; I expected it, I expected to hear it. All of them estimable men; two of them men who had dumped into this test business the patients who were dying upon their hands, and got a few doses of this medicine down them, fortunately for them, before they expired, and then the doctors threw up their hands in holy horror, "Look at what that Amick has done; he has killed my patient." They got rid of the responsibility themselves. I think they proved that two or three of those people who were in that test died; tried to prove that they all died, but they didn't do so by a very large majority; they let several escape. And I hope that they are not sorry that some of them lived; I am not; I am very glad. But if all of them had died, it would have been no warrant for the publication of this article; and that this article was published before that test was made, and that test and the results of it are lugged in here with very little grace, because, before this test was made, he had by this article denounced this man as a quack, a brazen faced quack, an imposter and a fraud, and then he himself becomes one of his patrons, and used the remedy and on the men whom he had himself selected.

Now you can see that malice was in his heart at the very time when he made these selections. I think that he was heard to say, and I think he will acknowledge that he did say, that one has to have the "bugs" in him before he has consumption; and he is one of the most remarkable discoverers of "bugs" in the world. He takes a great deal of delight in discovering "bugs" with his microscope, and I believe that he has done a good deal of valuable service to the world, but I believe that, after all, a man may venture to disagree with Dr. Reeves and not be a fool. Dr. Reeves says: Dr. Amick's "methods are plainly those of the most brazen faced quacks; for the proof see his, the plaintiff's, forty-page pamphlet."

The fact is, that that of itself, without anything else, would be libelous. To call a doctor a quack is precisely the same thing, or worse than to call a lawyer a shyster, a preacher a hypocrite, or a tradesman a fraud. It necessarily implies that that man is not only an ignorant fellow, but an ignorant pretender, and there is no proof in this record that Dr. Amick is by any means an ignorant man. The proof is that he is a very learned man and has occupied, during the past twenty years, positions of eminence in his profession, positions of eminence in various colleges of medicine. And now it occurs to me that because Dr. Amick has stepped a little bit in advance of his profession, has discovered something which he believes to be a benefit to mankind, that he ought not to be subjected to this sort of fire from his professional brethren, and I believe that the juries of the country ought to see that men who undertake to benefit mankind are protected from that sort of thing.

Now, they say that he kept that a secret, and that makes him a quack. But you must remember that Dr. Koch kept his remedy a secret, and he said he did it for the purpose of experimenting, wanted to perfect it before making it known to the world. He had a right to do that. Here is Dr. Keely, who discovered the gold treatment for the liquor habit; he has been hauled up and traduced and vilified by the members of his profession ever since he began. He does not pretend to visit every patient that he prescribes for, and he does not pretend to make his treatment public, and he doesn't intend to do it, and the reason he don't

want to make it public is that he don't want to have it handled by every fellow who comes along who would handle it carelessly, recklessly, and do more harm than good. Dr. Sequard discovered, a few years ago, what he called the Elixir of life. It was supposed to have been made public, and I expect more than fifty doctors right here in Chattanooga were stewing up guinea pigs, rabbits, etc., and squirting the juice into people as an experiment, and it didn't prove very beneficial to the people who got the squirt gun into their arms and legs by any manner of means. That is sufficient reason why this great discovery should not be made public, and, furthermore, if a man wants to keep a thing of that sort secret he has a perfect right to do so. The laws of this country encourage a man who has discovered something in putting himself in a situation to derive the benefit from it. If we didn't have any patent laws we wouldn't have many inventors. The encouragement that is given to discoverers, the protection which they get, the opportunity for personal reward, is just what makes this country lead the world in discovery.

Now, gentlemen, I prefer to reserve the balance of my time for the close.

ARGUMENT OF W. B. GARVIN, ESQ.

May it please the Court and gentlemen of the jury:

There are four pleas in this case. The first one is the plea of not guilty, or the general issue. This is especially applicable to the last count of this declaration. I will refer to that only sufficiently to say that there is no proof in this record that Dr. Reeves ever wrote the communication that was intended for the "Press." He simply had a verbal interview with Mr. Warner, in which Mr. Warner took down Dr. Reeve's words and did the writing himself. That writing was never published in the Press at all. Dr. Reeve's words, if untrue, might be slander, but could not be libellous, as declared on.

The fourth plea in this case is that the circumstances under which the letter complained of was written were such as to make it a privileged communication; that the plaintiff in this case had been advertising a medicine and appealing to public patronage through the newspapers and periodicals and by pamphlets, and

had been calling the attention of the public to his medicine and claiming for it great curative virtues and value, and thereby that he challenged criticism and comment; and that Dr. Reeves had the right, as a doctor, to make whatever criticism and comment he thought was proper, provided he did it without malice and under circumstances that justified him.

That plea I do not intend to discuss; but I want to take up simply the second plea, which is one of justification; and that is that the publication which Dr. Reeves made, taken in the ordinary sense, is true. I believe the evidence in this case will establish that fact. There is no dispute in this case, and Mr. Wiltse has not referred to any proof to the contrary in his argument, but that the advertisements which we have before us are the advertisements of Dr. Amick, or for which he is responsible. Dr. Amick claimed to have discovered a cure for consumption; organized a corporation with himself and three other men in it. They scattered broadcast all over the land pamphlets, and they subsidized the press. They caused advertisements to be placed in the press advertising that cure. He is responsible for that. These are the claims of Dr. Amick through the Amick Chemical Co.

Let us see what these claims are. In the first place, gentlemen of the jury, the article which Dr. Reeves wrote is set out in full in the declaration, and this is the sum and substance of it, as the plaintiff himself claims: "His (defendant's) intent and purpose and object in writing and publishing the said false and malicious communication was to advertise falsely to the public that plaintiff is a quack and his chemical treatment a worthless nostrum." That is what they say the intent and purpose of that letter was. Let us see if that chemical treatment is not a worthless nostrum, and if Dr. Amick, in advertising the same, is not a quack. Nostrum means simply that the remedy is a secret remedy. That is all right. A man who has discovered a remedy has the legal right to keep it secret. We do not challenge that proposition at all. But if the remedy is worthless, we are justified in characterizing it as a worthless nostrum. What is a quack? A quack is not necessarily an ignorant man; on the contrary, the more intelligent, the more dangerous he

is. We don't claim that Amick is ignorant. We claim that he has advertised to do things which he cannot do. We claim he has advertised that he has done things which he has not done. We charge that if he has so advertised, then he is a quack. What does Dr. Amick advertise that he can do? Here is a pamphlet which he sends out. On its title page is the following: "Dr. Amick's Chemical Treatment for Consumption, Asthma, Chronic Bronchitis, Hay Fever and all kindred diseases. Indorsed and adopted in practice by the medical profession at large. The medicines for carrying out this marvelously successful treatment are prepared solely by the Amick Chemical Co. Thousands of successful tests made by the most competent physicians prove that this is by far the most effective treatment for these diseases ever known to the profession." That is Dr. Amick appealing to the public. Now let us see what this pamphlet further says. "The author knowing beyond dispute that he has worked out an absolute cure for diseases heretofore admitted to be incurable" (here is a claim that this Amick Chemical Cure is an *absolute* cure for consumption) "and profiting by the experience of others, has, in the interests of suffering humanity and for the benefit and protection of all conscientious physicians having an honest desire to heal the sick, placed his formulas in trust with this company."

Now let us see if that is Dr. Amick talking. Here is his article in this pamphlet. I want to read you a few sentences to show that it is put in his name: "In this article, *I do not* intend speaking of the history of consumption, or enter into any discussion of the various theories that have been promulgated as to the cause of the disease." Further on, "*I have* examined patients in the second stage of consumption with the characteristic and typical changes in respiration, etc." "In order to have a proper conception of the theory which *I* present—" There it is, in great big head lines, "Dr. Amick's Chemical Treatment."

Now, I haven't time to read all of this pamphlet. I just want to read this part: "An examination of the statistics on file in other large cities does not show any unusual variations, which proves conclusively that this wonderful decrease is due to some local cause or influence. If anyone doubts our claims that it is due

entirely to Dr. Amick's Chemical Treatment for Consumption, the records on file in our office, together with the records of the Health Department, will promptly settle the question beyond dispute.

"In the face of these convincing facts, we defy any person or body of persons to question for one moment the claims we make for this treatment, namely: *That it is the first and only cure for consumption.*"

These are the claims of this man Amick. These are the claims that I am trying to get before you, gentlemen. If they are true, then find your verdict against Dr. Reeves. We do not say that Dr. Amick has not a legal right to advertise. Let him advertise if he wants to, provided he advertises the truth. I want to say to you that he advertises that he has done and can do certain things, and I will undertake to prove that he has not done those things and cannot do them.

Now then, gentlemen, the first claim that he sets up, and which I want to show you he cannot perform, is this: He has said in his deposition, and it is right here in this proof that he says he can treat consumption by correspondence. He wants to pick up unfortunate men all over this country, have them write to him for his medicines, and he will undertake to cure their cases by correspondence. Didn't he say that in his deposition? Didn't he say that when the physician ordered the medicines, they sent the treatment through the physician, and if there was no physician "we send direct to the patient." On this pamphlet is a list of questions for the patient to answer. The patient and Dr. Amick will cure this disease by themselves. "Did your grand parents have lung trouble?" Going to have this patient pass on the question whether his parents had lung trouble, you see? "Have your uncles or aunts been afflicted with lung trouble? Have you had brothers or sisters with lung trouble? Have you had *la grippe*? Have you had hemorrhages, etc.?" How is your appetite? Have you any stomach trouble?" If you will answer all of these questions and send the question blank with the answers to Dr. Amick at Cincinnati, he will send you the secret of this wonderful cure, and he will cure you of consumption. Can he cure by correspondence? What is the evidence

before you? You have to rely upon the evidence before you. What is it? Didn't those doctors, whom you personally know to be men of skill, get on that stand and tell you that it is an impossibility? Then, isn't it a fraud? Isn't it quackery for a man to advertise throughout the country that he can cure consumption by correspondence? That is the first thing. In the limited time remaining for the argument of this case I cannot stop to elaborate upon this. I must make these points very briefly and pass on. But that is the first fraud.

Now, what is the next? Dr. Amick and his Chemical Co. came down here and took this city by storm; took hold of the press and subsidized it. There was not a newspaper in this city that wasn't hired, paid. They put advertisements of cures in the papers. He advertised that he had done things which he had not done; that makes a quack. That is what I understand to be a quack. That is what I think the court will charge you is a quack.

I will take up each case, briefly state the facts regarding it as shown in the proof, and then go to the next.

The first is the case of John F. Jackson, vice-principal of the colored school. How is that advertised? Look at this article in the "Chattanooga Press": "Live Like a Savage!" "The advice the doctors gave Vice-Principal Jackson. They declared it the only hope of saving his life, but it proved otherwise. He surprises all who know him by recovering and is now teaching school again. The new consumption treatment which is being discussed throughout the world of medicine is not without evidence of its worth in Chattanooga."

These are the flaming head-lines of the article, and then it goes on to say how afflicted Jackson was; how he was near death's door, and how he took this wonderful treatment. "I thought I never should teach school again, but here I am, I have a wonderful appetite. I don't understand it. I only know I took the treatment as instructed"; and is now teaching school (?) You all heard the testimony that this treatment was supplied by the agents of the chemical cure. Was Jackson cured of consumption? What did Dr. Love say? Jackson is dead! Died of consumption. Was *not* cured. That is lie number two. This case is a sample of their advertisements.

I take it and look at it. That is an advertisement put in the most insidious form. You notice it is in that paper, not as an advertisement, but as reading matter; occupies the first part of the first column, first page, and goes in as news, under the guise of news, but is a paid advertisement; it goes in that form, as you see, so as to deceive the people into supposing that this is the expression of the views of the paper, not of the medicine company. So that is the first case.

Let us take up the next and examine it. The Board of Health of this city was attempted to be made the instrument and tool to advertise this concern. On July 8th, 1893, there was an advertisement in the "Chattanooga Daily Times," and you will notice how skillfully they worked this thing up, beginning gradually "GOING TO GIVE IT A TRIAL. A Prize Consumption Cure to be Tested in the City Hospital: The City Health Department has received fifteen boxes of Amick's Chemical Cure for Consumption, which will be given a thorough trial by City Physician Holland when opportunity offers."

Let us go right on to the next. I read from the "Times" of July 23: "City Physician Treating Consumptives. Dr. C. H. Holland, city physician, reports a most remarkable success in his use of Amick's Chemical Treatment for Consumption. The Times mentioned, several weeks ago, that Dr. Amick had sent several boxes of the different forms of the medicine to Dr. Holland for trial in this neighborhood. The latter has twelve persons under treatment in this city, and feels satisfied the cure will do all Dr. Amick has claimed for it. The twelve patients Dr. Holland is treating are so far improved that their appetite has returned, can sleep well at night, have no night sweats, the irritating cough has disappeared and they feel much stronger in every way. When consumptives return to such condition the cure must be getting in its work." It did get in its work on a good many around here. They are dead now.

Let us go on to the next reference to the alleged city cases. This is from the Times of August 8th: "THE CITY TEST PATIENTS. The Awful Third Stage Cases are now Wholly Recovered. The city tests in the hands of Dr. Holland are progressing magnificently. Of that the reporter (this reporter is Gos-

doffer, paid agent of Dr. Amick, masquerading as a reporter,) assured himself by accompanying the City Physician in his buggy to the lowly home of one of the charity patients." It goes on to state what he found there, and concludes with the following: "This is a fair example of all the cases," said Dr. Holland. "I no longer have any doubt at all. The city should immediately provide some means to supply the remedy to all pauper sufferers who require it." You heard Dr. Holland's testimony right here. You heard him say what the result of this publication was. He got letter after letter from all over the country asking about this remedy, because it seemed to have the sanction of the City Board of Health. Dr. Holland said that no such thing occurred. Isn't that a lie out of whole cloth? That was the purpose of it. It was published in the Times, and you know that the circulation of the Times caused the impression to go all over the country that the sanction of the Board of Health of this city had been given to this cure and the Board of Health had proved its efficacy by a test of twelve cases. You know that was not true. Dr. Holland sat there and said on his oath he had not endorsed it, and had not treated any test cases. There never were any such test cases. Dr. Drake, another member of the Board of Health, knew nothing of them; hadn't heard of them. They never existed. So here is lie number three.

I cannot do any more than just refer to these cases and then go on. On this same page of the Times is something more, and this is the way it starts off: "More surprises daily at the hands of the Chattanooga doctors. The life of traveling salesman George Goldston saved—Charles H. Gorman speaks of his experience—City patients all recovering—The physicians evidently on the right track for wholesale cures of dread consumption—More of the Times' investigation of the Amick matter." Then it goes on: "No subject is at present receiving greater discussion in Chattanooga than the Chemical Cure for Consumption discovered by Dr. W. R. Amick, of Cincinnati. * * It is the dawn of hope to thousands upon thousands in the Southland, and additional news is awaited with greatest interest. The Times man (that is Gosdoffer still masquerading as a Times reporter) has been researching among the physicians for several days

with results which are intensely gratifying. The reporter has conversed with a number of well known residents of this city who attribute their life and health to the chemical treatment. One of them is George Goldston, traveling salesman for Rosenau & Crutchfield, wholesale dry goods dealers at Chestnut and Seventh streets. 'I cannot recommend the Amick treatment too highly to you,' were his words, when the subject was broached. 'When I get on the road again I am going to tell all my friends throughout the South of my experience. I am a living example of the wonderful recuperative action of the new cure. * * * I had every symptom and fell away from 175 pounds to 134 pounds in flesh. Dr. Hunt, the County Physician, has been my regular attendant. He secured the Amick remedy for me. My hemorrhages at once ceased, the night sweats stopped, and now, after forty days' treatment, I consider myself safely established in health.'"

Mr. Rosenau was here and testified to the death of Goldston. He could not say positively that he died of consumption, but he described Goldston's symptoms, which were just the same at his death as when he began to take this so called remedy. He is dead. I will leave the jury to judge what he died of, from what the witness testified as to his manner of death.

Further on is another case: "Another prominent and popular young man who says he owes his present state of body and mind to Amick is Charles H. Gorman, with S. T. Dewees & Co., Grocers, on Market street. His recent pitiful condition from lung trouble is almost too well known to require recital. He lauds the remedy without stint."

You heard the testimony of Dr. Hope, who told you that Gorman never had lung trouble at all; was his doctor, and recommended him for life insurance and would do so again. There is lie five or six, I have forgotten which.

Right on this page of the paper is this quotation: "Dr. W. W. French, of Market street, homeopath, freely tells a Times man that he believed Dr. Amick had found the secret of the centuries. Dr. French claims instances are known of the cure of consumption by homeopathic treatment (a sop thrown to the homeopaths), but Dr. Amick's Chemical Remedy is a broad one which may be

adopted at large by the exponents of all schools of medicine. Dr. French will himself thoroughly test the Amick treatment."

Dr. French told you that was not true. He said he had received a personal letter from Dr. Amick and had received the medicine and had tried two cases with it, and the result was that they improved a little for a day or two, and then collapsed—went right down; that the effect of the remedy was disastrous; and the statement that he had ever recommended the remedy was false.

What is a quack? He is a man who says he can do things or has done things which he cannot do or did not do in the way of medicine—a boastful pretender. That is the common meaning of the word quack. Ask a doctor what a quack is, and he will tell you a quack is a man who resorts to methods not recognized by the profession. Any man who advertises would be considered a quack by them. That is their definition from the standpoint of medical ethics. But I wish to say that as a matter of law a man may advertise anything that he can do. If he can do a thing, it is his right to advertise it. We do not have to stand in this case upon any limited definition. But a man has not the right to advertise things that he cannot do. He has not the right to send forth to the public statements that he has cured cases which he has not cured, with the view of deluding people and decoying them into buying his medicine. If he does that, he is a quack. I think we have pretty effectually proved that Amick has done that thing, and is a quack, not only in the professional, but also in the common acceptance of that term.

Here, on the next page of the Times, is another case: "Dr. Holland and the reporter then visited a private patient, J. J. Bailey, proprietor of the saloon, at Montgomery avenue and Mitchell. He had been bordering on the second stage, had all the symptoms in pronounced form; he had coughed terribly for four years. 'I have been using the remedy only two days,' said Mr. Bailey," and I feel that it will cure me. Strange as it may seem I have already ceased to have night sweats. I cough much less and my expectoration is becoming more and more natural. I would not give it up to-day for thousands of dollars."

You will see how rapid that cure was.

That was on July 30th; on August 8th we find the following in the Times: "Free and Full Tests—To Be Held by a Committee of Physicians. * * * * J. J. Bailey is proprietor of a saloon at Ninth and King streets, recently removed from Montgomery and Mitchell avenues. He went to a prominent physician for examination and treatment for his lung trouble. In his own words Mr. Bailey says: 'The doctor took some of my expectation for examination under the microscope, and in due time told my wife I had an advanced case of consumption and would waste away in spite of all that could be done. He fixed the date of my death for some time in October, meanwhile dosing me with beechwood creosote, beginning with three drops three times daily. He then gradually increased it to twenty-five drops three times daily without benefit. Two months ago I felt as though I were becoming paralyzed and I quit the doctor. Ten days ago I had City Physician Holland place me under trial treatment of the Amick Chemical Remedy. I began to improve at such a rate as to surprise myself and wife.

"I had every symptom of consumption in pronounced form, but have lost them and feel quite hearty. Instead of dying in October, I expect to hold a celebration of my recovery.

"I cannot say too much for the new treatment and for Dr. Amick. The Times has done right in making an investigation. I would like first rate to go before Circuit Court Judge Moon and make affidavit to the facts I have told you, and my wife would also."

Yes, he feels so well and strong that he wants to go before Judge Moon. An affidavit before a plain Justice of the Peace could not express his feelings at all.

Now, Dr. Reeves told you yesterday that he examined this man Bailey, and found that *he did not have tuberculosis at all*. That gives the lie to that statement.

After so much had appeared in the newspapers and Dr. Reeves had taken hold of this matter, it was proposed to have test cases, and this is the conclusion of it: Dr. Reeves proposed, and the Plaintiff in this case (the Amick Chemical Company, which was behind Dr. Amick,) agreed that they would select cases and put them in the hospital out here and test that matter, and cases were

selected—six of them—three of them put in the hospital, and three were to be treated at home. Dr. Reeves testified that they were genuine cases of consumption from bacteriological examination, and Dr. Hope and Dr. Sims testified that they were. Now every one of them is dead. Dr. Reeves and Dr. Hope and Dr. Sims and Dr. Shepherd told you that they are dead, and all died of consumption. It may be that there was one, or perhaps two, of these cases in which we did not have the direct proof of the man who saw them die, but you know very well that if there was one of these test cases living to-day, he would have been here, or that there would have been proof of that fact here. They are all dead—all died of consumption. [Mr. Wiltse: There is no proof at all that they are all dead or that they all died of consumption.] I will submit to the jury whether or not there is proof of that. Dr. Shepherd said he saw one die of consumption; Dr. Reeves testified that he gave a certificate of the death of one and that he died of consumption. You know Dr. Hope said two of his patients died of consumption. We have not proof of one that he is dead at all, but if he is living, it is remarkable that there is no proof of that here. This is a case where the presumption is that a man is dead unless he is proved to be living. [Court: Confine yourself to what physicians did say.] I am not quoting the doctor as saying that; I am asking the jury to draw whatever inferences the facts will justify from the situation. [Court: You can allude to the fact that he is not here.] Yes, sir; that was the only purpose of my remark. I will just say of these six test cases in passing, that they were cases *agreed upon to test* this remedy. You remember the advertisement was that these six cases would be made a *test* and at the end, if they were successful, the "Times" proposed to present to Dr. Amick a diploma or some sort of testimonial of the fact. That diploma never was presented. Could there be proof more conclusive of the worthlessness of this nostrum? Will you not hold the plaintiff to the test he himself solemnly agreed to?

I will go on from that to the case of Dr. Long, and here is a reference to that case: "Dr. James E. Reeves is arranging for his crucial test, etc.; the patient in charge of the three doctors on the

West Side is recovering rapidly." That was the case of Dr. Long. You heard Dr. Sims and Dr. Wise say what his condition was. He had consumption—he took this treatment, and he died. That was the patient who was going to Walden's Ridge when he saw this advertisement of the Amick Chemical Cure; sent for it on his own responsibility while he was under the treatment of Dr. Sims and took the medicine and died; went down very rapidly after he took it. Dr. Sims told you how he seemed to be stimulated for a while, but the result was that he died, and the doctor says his death was hastened by the remedy. Here it is advertised that he was rapidly recovering.

I will simply refer to the Bridgeport case which Dr. Zurnley testified about. That is another case where the patient took the remedy and died. Dr. Hope's brother took it and died—died of consumption.

Here is a case of where a man died who did not die of consumption. "IN DEATH A PROOF.—A Remarkable Case of Times Compositor Stewart.—While Slowly and Surely Dying of Bright's Disease his Lung Trouble was Eradicated.—An Autopsy Revealed the Fact.—The First Known Post-Mortem Upon an Amick Patient.—It Is the Finest Thing I Have Known for the Lungs," said Dr. Townes. And it goes on to describe how a post-mortem was held by Drs. Anderson, Nolen and Townes. They found that this man had two diseases—Bright's Disease and consumption—and he took the Amick Chemical Cure and it was found in the post mortem examination that he had died of Bright's Disease, but in the meantime he had been cured by the Amick Chemical Cure of consumption. Drs. Anderson and Nolen say this is false. Dr. Anderson says that he told the man who wrote this article at the time that Stewart did not have consumption and never did have it. He is advertised as a man cured of consumption while he had this other disease. Notwithstanding he is dying of one disease this remedy is curing him of another. It is most outrageous for them to use this kind of advertisement. That is what they say it did; they quote Drs. Anderson, Nolen and Townes to prove it, but the doctors say he did not have consumption at all. This man died early in July.....and they waited

until August 6th to publish this, and quote Dr. Townes as saying, "It is the finest thing I know of for the lungs." They wait so long, why? Because in the meantime Dr. Townes had gone to Europe and could not deny it until he returned and got on the stand yesterday and he said it was "a lie!" Is not that quackery? What more than that do you want to make quackery?

They do not stop with publishing these things in the "Times." Here is the way this same case appears in their latest pamphlet: "POST-MORTEM PROOF. An autopsy furnishes conclusive evidence. C. E. Stewart, a well known compositor on the Chattanooga Times, was a sufferer with consumption complicated with incurable Bright's Disease." It goes on to tell about his death, and that at the request of his brother, S. B. Stewart, an autopsy was held. "The examination completely vindicated Dr. Amick's claims for his treatment; that it had performed its work magnificently, leaving the respiratory organs in splendid condition."

I do not think it is necessary to go on with this further. I think we have sustained the charges in Dr. Reeves' article. Is not this a worthless nostrum, and is not a man who says he does these things and does not do them, a quack? I wish I had time to go through this article word by word, line by line, and prove every word and line of it true. "The open court which you have established in the Times is most opportune." Remember this letter was written by Dr. Reeves in response to an invitation inserted in the Times by Dr. Amick's agent, inviting comment and criticism and expression of views by doctors, and the editor of the Times saw Dr. Reeves and, on account of his reputation in this line, asked him to contribute his views, and he did so. And the first thing Dr. Reeves says is: "The open court which you have established in the Times is most opportune." Was it not time that somebody was exposing this fraud? Here was advertisement after advertisement going all over the country, misleading the people. Was it not time for somebody to step forward and expose this fraud? I say the open court was indeed most opportune." Again, Dr. Reeves says: "The methods employed by Dr. Amick are plainly those of the most brazen-faced quacks." Did you

ever hear of anything more brazen-faced? The ordinary quack will advertise in the newspapers and through his almanacs, but he admits that it is just an advertisement; while these people undertook to subsidize the whole press of the country, having it put out as news on its own responsibility, accounts of great cures; and this is the most insidious form of advertisement that can be used; and as these advertisements were false, we have justified Dr. Reeves in making the statement: "The methods employed by Dr. Amick are plainly those of the most brazen-faced quacks." In proof see his forty-page pamphlet setting forth the virtues of his "Chemical Treatment." On the initial page he gives the following racy morsel: "The wise doctor knows a good thing when he sees it, therefore we need not urge him to be early in the field with this new treatment." The same publication tells further that "The Chemical Company is an incorporated concern with a paid up capital stock of \$300,000." Well, do not those racy morsels appear in the pamphlet? Is there any question about that? Is Dr. Reeves to be mulcted in damages for quoting extracts from Amick's own advertisement? "Is that the way for scientific inquiry? Is that the way of a reputable physician in discharge of his duty to society and obligation to the profession which gave him honor and standing among men? From first to last of his forty-page pamphlet sent out to catch the pockets and last hopes of the sick and dying, there are not to be found a half dozen cases of undeniable tubercular consumption. The testimonials are cunningly stated, but when read by the intelligent physician they are meaningless and therefore utterly worthless in the discovery of medical truth."

That is so; here is this pamphlet. I have not time to read all these cases advertised as cured of consumption, but you have seen that there is not a single case there in which an examination was made that showed the presence of the tubercle bacillus, the "bug" that Mr. Wiltse refers to, that proves a man has consumption. These cases all purport to give only the results of the first ten days' treatment, and are testimonials to the beneficial ef-

fects of the preliminary or free treatment. The unvarying testimony of the witnesses here is that the remedy did have an unduly stimulating effect at first, but the patient grew rapidly worse afterwards. There is nothing in that part of the article that is not true.

"If Dr. Amick had been moved by a spirit of true scientific inquiry, he could have found in the city of Cincinnati ample opportunities for convincing the whole world of the value of his 'Chemical Treatment.' There, at his own home, he could have had in the great Cincinnati Hospital sufficient clinical material to prove the truth of his assumption, and an audience of the great men of that city to either indorse or condemn his claims."

Well, that is true. Why didn't he go to the hospitals of Cincinnati and test his treatment? Has the plaintiff offered any explanation of his failure to pursue this course?

But I am reminded that the time allotted to me has expired. Gentlemen of the jury, I could go through this letter of Dr. Reeves sentence by sentence, and show you from the proof that every statement it contains is true, every criticism he makes, however severe, is justified by the facts, and every epithet it applies to Dr. Amick or his so-called remedy is richly deserved. But that is not necessary. You have the letter before you, and you will remember the evidence. I am willing to rest the case upon the proposition that Dr. Reeves has stated nothing but the truth. It required no little courage on his part thus to attack and expose the fraudulent pretense of this rich and powerful corporation, indorsed, as it seemed to be, by an almost unanimous public press. His age, and the eminence which he has so long and justly enjoyed in the medical world, leave no room for the imputation to him of petty malice or envy. In what he did, it must be evident to you, he was actuated only by a sense of duty to the public and to his profession. That duty he discharged fearlessly and successfully, and for so doing not only this community, but the country at large, owes him a debt of gratitude. It remains for you to say whether you think his services merit the penalty of a judgment for damages.

ARGUMENT OF E. S. DANIELS, ESQ.

May it please the Court: Before proceeding to a discussion of the facts to the jury, I desire to call your Honor's attention to a few propositions of law which we desire embodied in the charge to the jury. We ask your Honor, in the first place, to charge in substance as follows:

If the jury are satisfied that the words spoken or published are true, in substance and in fact, they must find for the defendant, although he may have spoken or published the words maliciously. In other words, if we have proved the truth of the words published, then, under our pleas of justification, the question of malice need not be considered by the jury. The truth of the language published, when established, is a conclusive defense to the action.

On the question of privileged communications we ask your Honor to charge the jury as follows: Every one who, with reasonable cause for the belief, believes himself possessed of knowledge which, if true, does or may affect the rights and interests of another, has the right in good faith to communicate his belief to that other. He may make the communication with or without previous request, and whether or not he has any personal interest in the subject matter of the communication, and although no reasonable or probable cause for the belief may exist. The right is founded on belief. Did Dr. Reeves believe, at the date of the publication, that he was justified, from all the circumstances and from the investigation he had made at home and abroad, that he had the right to make this publication in the interest of society and humanity? If so, he was justified in making the same. All we have to determine is whether the defendant stated more than what he might reasonably believe. If he stated no more than this, he is not liable. We insist that the circumstances under which the publication was made fully warranted the defendant in using the language complained of, and that no liability attaches for the use of the same.

The authorities say that when a person is so situated that it becomes right, in the interest of society, that he should tell a third person certain facts, then if he *bona fide* and without malice does tell him, it is a privileged communication.

Now, if your Honor please, we ask you to charge the jury that plaintiff, in his

declaration, has made no charge of actual malice on the part of the defendant against the plaintiff, and that being true, the moment this publication appears to be conditionally privileged, there being no charge of actual malice in the declaration, then the defendant is entitled to a verdict in this case. If it is desired to raise the issue of actual malice, this must be done in the declaration by an averment to that effect. There is nothing in the declaration on this subject, except the usual and ordinary charge that defendant falsely and maliciously published the article. The plaintiff is supposed to know under what circumstances this publication was made, and if he desired to take it without the privilege he must allege in the declaration that it was made with malice in fact toward the plaintiff.

We request the Court to further charge the jury as follows: Every person has a right to publish fair and candid criticisms, although the author may suffer loss from it. Such a loss the law does not consider as an injury, because it is a loss which the person ought to sustain. It is, in short, the loss of fame and profits to which he was never entitled. When an individual invites public attention in any way, or appeals for public patronage (dealers in patent medicines, advertisers for all business enterprises) he challenges public criticism. When a medical man brings forward some new method of treatment and advertises it largely as the best and only cure for some particular disease or all diseases at once, he may be said to invite public attention. The plaintiff in this case had advertised extensively, in public pamphlets and through the newspapers, that he was the discoverer of a new and wonderful cure for tubercular consumption, and having, of his own volition, sought these mediums through which to advertise and place before the public his alleged remedy, the defendant had the right to go into the same forum sought by the plaintiff and criticise his methods and alleged cure, if the same was done in good faith, without malice, and in temperate language, and plaintiff cannot complain if he got the worst of the controversy.

If your Honor please, we insist that the authorities fully sustain the proposition that whenever the communication appears, from the circumstances of its publication, to be privileged then actual malice must be shown on the part of the defendant toward the plaintiff before a recovery can

be had in the case, and I think it is also well established that actual malice must be charged in the declaration.

Now, if your Honor please, as to the second count: It purports to charge libel. That means that the article complained of was not only written or caused to be written by the defendant, but that the same was published. We insist and ask you to charge the jury that, under the facts as developed in this case, if any liability attached for the words used it must be recovered in an action for slander and not libel. Dr. Reeves did not write a word. The reporter, while talking with defendant, made notes of the conversation, using his own language and not Dr. Reeves', and the article so prepared by the reporter was never published at all. If the plaintiff desires to recover on account of any injury sustained by reason of that interview he must do so on a charge of slander and not libel.

If your Honor please, another question: It is developed in proof in this case that this remedy, whatever it is, good or bad, belongs to a corporation and, consequently, that Dr. Amick, individually, does not own the remedy, and the main charge in the declaration is, and the proof goes mainly to that question, that the language complained of was used in reference to this alleged Amick Chemical Consumption Cure, and it necessarily follows that if any one suffered injury it was the corporation and not Dr. Amick. This being true, the plaintiff in this case cannot recover for any loss of profits that may have resulted from a diminution in the sale of the medicine or remedy, because he does not own it, and there being no proof that he has sustained damages in any other regard he is entitled to recover no damages whatever in this action.

Gentlemen of the jury: The limited time allowed me for argument will not permit me to discuss in detail the facts testified to by the various witnesses. I will, therefore, only attempt to touch upon a few of the main facts in the case. The testimony clearly shows that, for the purpose of robbing the sick and dying men and women of this country, the two Amicks entered into a conspiracy more reprehensible than anything that has heretofore been revealed in the history of any age or country, and for the purpose of carrying to success the conspiracy thus formed, they felt the supreme necessity of first muzzling and subsidizing the news-

paper press, and for this purpose they selected and took into their unholy combination one S. G. Sea, a former newspaper man, and then took in another man, also, who was not a physician and knew nothing about this matter; and they vested these two men, Sea and Spivey, with full control of the sale and distribution of this alleged cure throughout the entire country. Now, gentlemen, can you believe that there is a spark of humanity in the bosom of a man who would undertake anything of that kind? The statistics show that 150,000 people die in the United States annually of consumption, and yet this alleged remedy is sought to be kept secret, and placed alone in the hands of a corporation (composed of the two Amicks, Sea and Spivey) for sale and distribution, such sales being conducted and the instructions for the use of said remedy being given by Sea, Spivey and a lot of clerks who are not physicians. Do you believe that a man who is great enough to discover a cure for consumption would be little enough to undertake to keep it a secret in that way? Hence, I say, they took this newspaper man in for the purpose of deceiving and subsidizing the press. They knew the importance of having the press friendly to their interests, because, otherwise, their fraudulent scheme would be heralded over the country at once.

What further did they do? They imported this man Gosdoffer, who was also a newspaper man, from Cincinnati to Chattanooga, and procured him to be employed as a reporter for the Chattanooga Times, and he being at that very moment the paid agent of the Amicks and the Amick Chemical Company, and as such reporter and while acting as the agent of the Amicks, the work of writing up the alleged cure for consumption was specially assigned to him, and I believe it is not overdrawing the truth to say that there never has been such lying recorded in the history of this or any other country as that fellow did. They were blowing their own horn sure enough. Their paid agent was engaged exclusively in writing up these alleged cures. They had a contract with the Chattanooga Times for advertising, and their own agent was allowed to write up and furnish the advertising matter. Under their contract everything appeared as reading matter, while, in fact, it was all paid for at double the regular advertising rate. They also

had advertising contracts with every other newspaper in Chattanooga, the most notable contract being with the "Chattanooga Daily Press," in which contract said paper, for a money consideration, agreed to exclude from its columns any comment or criticism unfavorable to the Amicks and the Amick Chemical Consumption Cure. For the publication of an article in an evening paper about a column in length they paid the sum of \$100, which article was submitted to them for correction and approval before publication. These false and fraudulent reports of cures were not only published in the Chattanooga papers, but all over the country. Is that reputable? Is that honest? If these reports had been true, it would have been all right, but we have shown that every person reported as being cured, where in fact such person had consumption, is in his grave to-day!

What more did they do? Not only did they deceive the newspapers and use them in this conspiracy, but they also attempted to deceive and bribe the entire medical profession into countenancing and participating in this fraud. They were smart enough to know that unless some inducement was given to the physicians to at least keep silent, they would discover and denounce this quack medicine and proclaim it to the world without delay. So they went to the physicians and said, "Now we want you to act as our agents, like Gosdoffer. We will send this medicine to you for ten dollars, but when you want it sent to the patient through you it will be fifteen dollars, and you can charge your usual calling fees." What does that mean? For every month's treatment, they are saying to these physicians, we will give you five dollars, and in addition you can charge the usual fees. Think about that, gentlemen. And if it had not been for the fact that one man rose up in this community and said that this thing was a fraud, and he was going to proclaim it, there is no telling how many hundreds of thousands of dollars would have been wrung from the suffering and dying men and women of this country. But there was one man, gentlemen of the jury, and there are plenty others in Chattanooga who felt the same way, who, for the sake of five dollars a month and his usual calling fees, would not sell his manhood and lend his aid in humbugging suffering humanity, and he said, I will proclaim that this thing is a fraud to the

world, let the consequences be what they may. And you are asked to give a verdict against the man, who, because of his love of right and his interest in suffering humanity, did that, and who, at his own expense, has been forced to defend this action. Will you do it? I cannot think that you will. Will you give them a further advertisement by declaring that this alleged remedy is what they claim for it? I cannot believe you will be a party to proclaiming such a falsehood as that to the country. Why, a verdict of this jury, even for one cent, would be worth a million dollars to them, because it would be a virtual endorsement of their claims, and be sent by wire all over the country within one hour from the delivery of such a verdict. They would send it out world-wide, "Dr. Amick's cure vindicated. A jury of reputable citizens of Chattanooga, American citizens, said that this is not a quack medicine and that Dr. Reeves is guilty of libel." Gentlemen, will you assist them to further perpetrate this fraud upon suffering humanity? I cannot believe you will. I do not believe that you are made of that kind of stuff.

So I say, gentlemen, having taken in the newspapers, as they did, if they had taken in the doctors, which they did not, what would have become of us? If the doctors had been bribed by this five dollar fee, with the newspapers already deceived and subsidized, what would have been the result? Wasn't this, therefore, a most opportune time for some honest and fearless man to rise up in the interest of this most pitiable and unfortunate class of persons and denounce these vile conspirators in language and terms commensurate with their great wrong? Dr. Reeves, as it was his duty to do, proclaimed to the world, Dr. Amick is a most brazen faced fraud and quack, and the proof has fully sustained this charge.

The plaintiff, in his deposition read in evidence before you, admits that he is not a legally qualified practitioner of medicine in the State of Tennessee, and therefore his alleged practice in this State is in violation of the law regulating the practice of medicine and surgery.

Now, gentlemen, is it a cure as represented? Who has testified to it? Think of the six hundred physicians in Cincinnati—that is the number who live there to-day—right where this matter first came up. Have they brought a witness

here, outside of the Amicks, to prove the efficacy of this remedy? No, not one. What the Amicks have said on this question is wholly unworthy of belief, and I don't think you will give either one of them credit on his oath, because if ever there was dodging by witnesses it was by these Amicks, who did not know, according to their testimony, who the directors of the company were, which company is composed of only four members. I say, outside of themselves, what physician has testified that this medicine has ever cured or benefitted a single patient? I do not believe a word of the testimony of Dr. Amick to the effect that this remedy cured two men in Cincinnati, because such testimony is too much at variance with the testimony introduced by a number of reputable physicians and witnesses in this city to the effect that this medicine contains no curative qualities whatever. I do not know where his two Cincinnati patients are to-day, whether dead or living. They have been published as being cured. Certain men and women were likewise published in Chattanooga as being cured, and they are all dead to-day. If this is a cure, if it is what he represents it to be, or anything in that neighborhood, why didn't he bring some of the physicians from Cincinnati here to so testify. Why didn't he bring us just one disinterested doctor, or why didn't he bring us just one disinterested man who was not a doctor, who would say that this medicine has done what he claims for it? It had been extensively used throughout the country. They have not done so, and it is reasonable to suppose that none such can be found, because they have searched the country over to find witnesses favorable to their contention in this case.

Now, what have we shown? Drs. Wise, Sims and Hope tell you about those six test cases. Are they not to be bound by their test patients? They agreed to it after the controversy had arisen. Dr. Reeves said he did not believe that this medicine would do what it was represented, so they said, "All right, Doctor, we will make a test and determine whether it will or not." Aren't you going to bind them by their own test? They selected one of the patients themselves and agreed to all the rest. What became of these test patients we ask? Every one of them is dead. The doctors testify that in some instances

they believed the medicine hurried them off. Did the medicine do for them what they said it would do? The presumption is that these patients were satisfactory to them. The patient Lizzie Brown, specially selected by them, they claimed to be a good subject, and not only this patient, but all the rest of them died. Now, gentlemen, Drs. Sims, Wise, Hope, Townes, Nolan, Shepherd, Love, French, Holland, Anderson, Drake, Zurnly and Reeves all testify that this remedy is worthless. If that be true, it does not make any difference whether Dr. Reeves had malice in his heart toward this man or not. I can call a man a thief if I can prove it; I can call a person claiming to be a lawyer, a shyster, if I can prove it, and no liability whatever will be incurred. But we say, in this case, that Dr. Reeves, as he testified, had no malice against this man, and that he spoke simply of this cure and the method of putting the same upon the market and nothing more, and I think the Court will charge you, gentlemen of the jury, that the matter published must be considered by you in the sense it was intended by Dr. Reeves and as commonly understood by persons reading the same, and that you must find that the language used by him related to this alleged cure only and not to Dr. Amick in his individual capacity.

Now, gentlemen, what more? We have traced down every case in Chattanooga, where it was claimed by Amick that a cure had been effected, and every one, who was shown to have had consumption, died. The two or three other cases that they advertised as cured, we have shown by the physicians who attended them, never had consumption at all. This is not all; they published in this city, and all over the country, that eleven test cases, in the last stages of consumption, had been treated by the City Board of Health, and that they had all been cured. Was that true or false? Dr. Reeves investigated that matter. He went to Dr. Holland, the President of the Board of Health, and was informed that such statement was unauthorized and that such claim on the part of Amick was wholly false. Was not Dr. Reeves, therefore, justified in saying to the world that such claim made by Amick was not only false, but intended to deceive the public?

Now, gentlemen, what further? Let

us look at these cases. Jackson is dead; Long is dead; Goldston is dead; Hope is dead, and the six test patients are dead; Stewart, Gorman and Bailey never had consumption, as shown by every witness; still, they published to the world that these men had consumption and were cured. There is the Alabama case also; we had Dr. Zurmly here to tell us about that case. That is another case like the others I have mentioned, where the patient took this medicine faithfully and the doctor says that it hastened her death, she dying in a week or two after commencing the treatment.

Gentlemen of the jury, Dr. Amick claims also, that he can treat this disease successfully by correspondence, and sends a form along with his forty page pamphlet for the patient to fill out. Now, can he do that? To say nothing about the truth or falsity of the other things he has been claiming, can he do that? If he cannot, he is advertising that he can do a thing which he cannot, and if that be true, under the definition of a quack that the Court will give you, he cannot recover in this action. If he is a quack and his medicine will not do for patients as he claims, then there can be no recovery in this case. Every physician put on the stand was interrogated on this question, and they all say that it is impossible to treat patients for any disease by correspondence successfully, and that stands to reason and common sense.

It has been clearly shown, from the testimony in this case, that this was a conspiracy, more reprehensible and more far-reaching in its consequences than any combination or conspiracy that has ever heretofore been formed and entered into in this or any other country. There might be a conspiracy having for its object the robbery of one man or a bank, or something of that kind, which is bad enough, but when men deliberately, for the sake of money alone, enter into a conspiracy to rob the sick and dying throughout the entire world, what shall be said of them? What shall be said, I say, and what ought to be the punishment of such men, who, knowing that 150,000 people die annually, in the United States alone, of consumption, and knowing the disposition of persons suffering from this fatal malady to catch even at a straw, will try to deceive and defraud them in the manner shown by

this testimony? Hanging by the neck until they are "dead, dead, dead" is too good for such scoundrels and rascals as these Amicks have shown themselves to be. Every single doctor that ordered this medicine, as far as we have been able to learn, was published as endorsing the treatment. The witnesses say that this medicine is composed of strong stimulants, and that during the first few days of the treatment patients very often seem to be improving, and, by an examination of the numerous letters they have published as endorsing this remedy, we find they were mostly written during the first few days the patients were taking the medicine, and, this being true, such letters amount to nothing as endorsements of the cure, as the patients, at that time, were evidently under the influence of such stimulants, and there is nothing to show that such cases were ever permanently benefitted. Still these alleged testimonials were so cunningly stated and adroitly put before the public that to an unsuspecting mind they often created the impression that they unconditionally endorsed the treatment as a cure.

Dr. Reeves, before publishing his article, had written to a number of physicians throughout the country, who had been published in Amick's pamphlet as using and endorsing his remedy, and in reply he received letters from such physicians, each and all of them saying that they had never endorsed Amick's alleged cure, and that the medicine, in their opinion, was a fraud, some of the writers saying that they had treated as high as twelve cases with the Amick cure and that every patient had died. Some of such doctors said that, simply to satisfy their patients, they ordered the medicine without saying more, and that this was seized upon by Amick as an excuse for publishing their names as endorsing the treatment. Hence it was that if a doctor ventured to order a package of this medicine, in the hope that it might do some good, they rushed right off and put his name in the newspaper or in this pamphlet as advocating the remedy.

Now, gentlemen of the jury, they have, in the declaration, averred the meaning and intention of the language used by Dr. Reeves, as my associate has told you. They say that the purpose and intention of this publication was to advertise Dr. Amick as a quack, and that his medicine

would not do what he claimed for it. If, under the first plea to the declaration, we have shown that he is a quack, and that his medicine is not what he represented, then we have justified, as the law calls it, and it does not make any difference whether there was any malice on the part of Dr. Reeves toward the plaintiff or not, because we have proved the truth of what we said. We said, in our publication, that he was a quack and his alleged remedy a worthless nostrum, and these charges are fully sustained by the proof.

But, gentlemen of the jury, for the purpose of this argument, I might admit that there was not a single word of truth in the article published. I say I might admit, for the sake of argument, that plaintiff had, upon the trial of this case, fully succeeded in proving that what Dr. Reeves said was not true; still, I claim that, under the law, Dr. Reeves cannot be held responsible in this case. And why not? Because he had investigated this matter; he had gone to those people whom they had advertised as being cured; he had gone to the City Physician, who was the President of the City Board of Health; he had written to twenty-five or thirty doctors, throughout the country, whom they had advertised as using this remedy and endorsing it as a cure; he had sought information from every source possible before making this publication, and from everywhere came the answer that Amick was pursuing the methods of a quack and his alleged remedy was a fraud. Didn't he use precaution? Didn't he inquire of the identical persons whom they advertised as endorsing the cure? Wasn't he entitled to write to their own witnesses and ask about their experience and whether their advertisements were fraudulent or not? Yes, he did all that at his own expense, and he received his communications, and he went to the newspapers and said, in substance: "I have investigated this matter; here are physicians from Maine to California and from the Lakes to the Gulf, who state that their endorsements of this cure were unauthorized and that this alleged cure is a fraud."

Now, gentlemen of the jury, after he had made such investigation and procured all this correspondence and had gone personally to these people in the city of Chattanooga, didn't he believe, and didn't he have the right to believe, that Amick's treatment was not what

he represented it to be, and that it was his duty, as a physician and a citizen in this city, to proclaim Amick a quack and his nostrum a fraud? They cannot complain, as they themselves began the controversy. Their own agent, while on the Times staff, probably wrote the article inviting criticism. So Dr. Reeves was drawn into the controversy by their acts and at their invitation, and we say that even though every word of the publication be false, still, under the law and the particular circumstances of this case, it is a privileged communication and you are bound to find for the defendant.

Gentlemen of the jury, the question presented for your determination is of paramount importance, not only to the medical profession but to the suffering and afflicted everywhere. And in view of this fact I want the verdict of the jury, composed of intelligent and manly Tennesseans, to irrevocably settle the question that no breach of the law or rule of civil conduct is violated by denouncing and exposing the methods and aims of such *pretenders, quacks, frauds and conspirators* as the Amicks have shown themselves to be. The atmosphere now is so badly polluted and contaminated by reason of the fraudulent schemes and combinations formed and entered into by unscrupulous and designing men for the sole purpose of deceiving the people, and taking from them their hard earned money without giving in return value therefor, that it needs the clarifying influence of a straight, clean-cut verdict for the defendant in this case. Let there be no compromise. Vindicate the honor and good name of the medical profession, and above all vindicate and establish the right of an honest and fearless man to speak the truth, when the truth should be told in the interest of the people among whom he has lived and been honored with their patronage and confidence for the last eight years.

I know the honesty of purpose of Dr. Reeves, and the generous and kindly impulses of his great mind and heart. He was my mother's doctor when I was brought into this world, and from that day to this a very intimate and warm friendship has existed between him and our family. He is not only my friend socially, but he is our family physician to whom we entrust and commit the dearest and most valued interests of life. I know him to be a true man and a

skilled physician. On account of his great learning and ability in his profession, and his high personal character, he is greatly esteemed not only in Tennessee but throughout the entire country. And this is the man upon whose character and good name you are asked to place the stigma of having falsely and maliciously libeled W. R. Amick. Yes, you are asked to pronounce him a libellor and a falsifier, and thus tarnish and besmirch the good name he has for so many years sustained among his friends and neighbors.

But, gentlemen of the jury, I must close, as I am admonished by the court that my time has expired. And in committing the interests of my client into your hands, I do so with the belief and consciousness that right and justice will prevail.

ARGUMENT OF HON. H. M. WILTSE.

May it please the Court and Gentlemen of the Jury:

Dr. Reeves has suggested to me that he feels that if his "confidential" letter to Dr. Amick is read it ought to be read in full. If I cannot do this, I shall read just such parts of the letter as I deem best.

[Mr. Daniels: If it goes to the jury it goes as a whole.]

Your Honor suggested that you would like to hear from me upon the question of the second count as to whether or not that was a publication, and I don't think of any authority except one. My impression is, however, that it is the elementary law of the subject and Wharton lays it down in his Criminal Law, Sec. 1623, as follows:

"A party who communicates libellous matter to another with a view to its publication, is guilty of publishing, on the principle, that in misdemeanor all participants are principals. And one who furnishes the facts of the libel published in a paper, and consents to its publication is indictable for a libel."

Court: Without regard as to whether it was in fact published?

Mr. Wiltse: In contemplation of law it is a publication.

Court: If it had been written and handed to one person that would be sufficient; one person other than the person libeled. But if he simply, in a verbal in-

terview with a reporter stated to him a thing, although he may have expected that he would publish it, if it was not in fact published that would not be libel.

Wiltse: He at the same time delivered this letter of Dr. Richardson as part of the interview, and that was written.

Court: I shall, of course, instruct that if after that was set up it was shown to one or more persons, with Dr. Reeve's knowledge and consent that would be publication.

I have refrained from any interruptions after the one which Mr. Daniels criticised, although I am compelled to say that sometimes I did so at the expense of listening to patent misstatements of the record, and those things I shall, of course, have to call attention to as I go along. But I have not, by any manner of means, intended, by keeping still, to make the impression that I regarded those things as in the record at all or believed them, for I did not. I was trying to behave myself according to their request.

This advertising matter about which Mr. Garvin makes so much hullabaloo, is all advertising matter of the Amick Chemical Company. Dr. Amick cannot be held responsible for that in this law suit, nor in any other way. That is the Amick Chemical Co. Now, Mr. Daniels says right in that connection that Dr. Amick does not own the Amick Chemical Co., and, therefore, he ought not to recover any damages that may have accrued to his medicine, his cure, his treatment. But Dr. Amick is shown to be interested in the Chemical Co., and he does not sue alone for the injury which arose to his treatment by reason of these libellous publications, but for the injury which arose to him in his profession by being libellously called a quack and other epithets of that character. So that I think my friends have laid an altogether unwarranted stress upon these newspaper advertisements. They have come along here and shown that the newspapers did publish a great many lies, a great many ridiculous statements; but they have not shown that anybody connected with Dr. Amick or the Amick Chemical Co. had anything to do with the writing or publication of these things. Now, they undertook to say that Gosdoffer was shown to have been an agent of the Amick Chemical Co. There was no proof whatever of that. Mr. Ochs said, time after time, to Mr. Daniels that

when he employed Gosdoffer he employed him as a newspaper reporter the same as he would employ any other reporter, and did not know how it happened that he was put on this particular line, except that he had information some how that the man had been working up the same line in another place. It would be utterly improper that we should be responsible for all of these publications, whether they are true or whether they are false.

Now this thing, which Mr. Garvin has introduced and misquoted. It is the very pamphlet, and the record shows it, that Dr. Amick had withdrawn, because it did not meet with his approval. He did not know of it having been circulated, and when he found what it was he had it withdrawn. He did not say in the pamphlet or any other place that he had an absolute cure for consumption. He says in his own testimony that he never made any such claim as that; that he simply claims to have a remedy which is beneficial to people in the earlier stages of consumption. "The author, knowing beyond dispute that he has worked out an absolute cure for diseases heretofore admitted to be incurable and profiting by the experience of others has, in the interest of suffering humanity and for the benefit and protection of all conscientious physicians having an honest desire to heal the sick, placed his formula in trust with this company." This is not signed by Dr. Amick, but by the Amick Chemical Co. There are many other diseases which this is supposed to apply to; catarrh, asthma, etc. I do not suppose that anybody in the world ever claimed that there was an absolute cure for consumption in its later stages. Even these doctors do not pretend that they have any absolute cure. They lugged in several of their patients that they had lost and gave themselves a good boom by laying that off on the Chemical Treatment.

They say that every one of these test patients died. We say that there is no proof of that before this jury and no proof in this record. I say, on the contrary, that they have only shown that out of six test patients (and the test was not made according to the terms agreed on), they say that out of six four died. If a man can save 66⅔ per cent. of consumptives that have gone under the "bug scope" and been properly passed upon by a distinguished "bugologist," a distin-

guished "consumption-ologist," if they can save two out of six such patients as that, I say their cure is wonderful and the newspapers cannot laud it too highly. They ask why we did not have some of those test patients here to show that some of them survived. I can tell you one thing: I had a witness subpoenaed to account for every one of these test patients, but I don't know anything about the whereabouts of those two patients that they do not account for. But there was one person that they had within their easy reach who could have told all about them and they did not see fit to bring that person here; and that was the Sister Superior, or whatever they call the office at St. Vincent's hospital. Why didn't you bring Sister Anita here and let her account for them?

[Mr. Daniels: Because the Mother Superior objected; it being against the rules of the church.]

Now, Mr. Garvin tries to make fun of those questions that are sent out to the patients. He thinks it is perfectly ridiculous for them to ask them whether their relatives had consumption, whether they had certain symptoms. That all goes to show how careful, how conscientious, how pains-taking they are when they do undertake to send their remedies through the mails, or by express, to send them without their personal visit to the patient. Dr. Amick swears, and all swear that have anything to say about it, that it was not their purpose to send the remedy direct to the patient, but preferred to have it go through their family physician. If the physician understands the remedy properly, understands his business properly of course he can handle that remedy just as well as the man who invented it. So I don't think all that proof about not being able to treat consumption properly by correspondence cuts a very large figure in this law suit. I don't think it is half as big as one of those "bugs" of the doctor's would appear if he would put his microscope down on it. It is in proof that that thing has been done by one of the most eminent physicians in the Court.

Mr. Daniels seems to be under the impression that because the Times issued an invitation to the public to discuss the merits and demerits of this treatment, because the Times instituted what it calls its "Open Court," Dr. Reeves or anybody else might come along and, without

the risk of being guilty of legal libel, say what he pleased through the columns of the Times; that the Times could fortify itself behind the "Open Court" and relieve itself from liability for libellous matter, and the correspondent who saw proper to publish such matter would be relieved from liability. That is absurd. There is no force whatever in that "open court" business. When a man publishes libel it is libel. I don't care whether he publishes it in "open court" in the Chattanooga Times or on a postal card; it is libel just the same. There is nothing can protect it from being libel if it is libellous.

Now, a good deal has been said about whether this business was malicious or was in good faith. They brought it out themselves that Dr. Reeves had been arrested for sending a communication through the mails that was in violation of the laws of the United States, about this matter. They brought it out themselves about these postal cards being sent out all over the country. With these postal cards here in the record and with these answers, they talk about a conspiracy,—they talk about our being guilty of a conspiracy against the flesh and the devil! And yet, while that may not have been their purpose, it is certainly possible that a conspiracy has been formed against us by sending this stuff out. Mr. Daniels talks about the expense of getting all this information in the interest of science and humanity. The expense was a postal card for each one of the letters he got back; cost the other fellow two cents where it cost him one. With all that expense he may have been entering into a conspiracy with these men to meet the requirements of this case, and to do the Amick Chemical Co. and Dr. Amick injustice and injury in their business and in their profession.

Now, I have been permitted to introduce this letter, and I believe, as my time has been extended ten minutes I may, perhaps, read it as a whole, as the Dr. Reeves has requested. I do not want to do the Doctor a bit of injustice and won't if I can help it:

DR. REEVES' LETTER.

[Personal and Confidential.]

"Time, my Lord, hath a wallet on his back
In which he carries alms for oblivion;
A great sized monster of uncemely mien."

CHATTANOOGA, TENN., October 10, 1893.
W. R. Amick, M. D.

MY DEAR DOCTOR: As my heart was warm I thought I'd write you a letter—

"nothing extenuate, nor set down aught in malice"—and through you return my most grateful thanks to the distinguished body of medical scientists and philanthropists—the Amick Chemical Co.—of which you are the central bright and shining figure, for at least a score of copies of the following interesting letter, kindly sent me by the high-minded honorable gentlemen to whom it was fatally addressed:

"166 W. Seventh Street,
"Cincinnati.

"DEAR DOCTOR: We are informed that you received a postal card some time during the past month addressed to you by Dr. James E. Reeves, of Chattanooga, and making inquiries concerning Dr. Amick's treatment. We write to ask you to favor us by sending us his card, and we will thoroughly appreciate the courtesy and very willingly reciprocate whenever you will give us the opportunity. Truly yours,

"THE AMICK CHEMICAL CO.

"E. L."

Some of these exquisite favors were accompanied with the Chattanooga Times' "Biggest Ad.," containing a very poor picture of myself, and of which newspaper you and your company, no doubt, supplied yourselves liberally.

But if this copy of the Times were all that was sent me by reason of your "malice aforethought," you might feel thankful. Indeed, I am very sure if your eyes could behold the damaging proof against you and your cure—the unwarranted use of names, and the utter failure of your great discovery to make good your high-sounding promises—you would wish from your inmost soul, if you have not lost all professional pride, that you had not created a sensation in Chattanooga over a well-meaning postal card addressed to one of your faithful reflexes, the "Professor of Physiology and Histology, Cincinnati College of Medicine and Surgery," also "Bacteriologist and Microscopist;" and mark you, that in not a single instance did this communication, laden with valuable evidence, come to me from a person whom I had addressed "in the interest of medical truth," concerning your so-called Chemical Treatment.

What a magnificent opportunity you missed because of your rage and lack of faith in your own precocious bantling. Having politely and in a sincere spirit of

medical inquiry asked your friend Juettner for the "outcome" of his experience with your "treatment," he could have covered me with his testimony of the grand success of your "treatment," and you with imperishable glory for having discovered (creosote, camphor and alcohol?) a cure for consumption! I could not have rejected his testimony, no matter how servile and erroneous.

Instead of taking advantage of my respectful confidence in Juettner's *professional* title, you saw the shadow of technical excuse for complaint, and had me summoned before a U. S. Commissioner to answer for the use of a postal card sent to your friend with good intentions; all this you did to prove the value of your nostrums and appease your injured innocence. Shame on you; for it is a confession of the shallow foundation upon which you and your company have builded. If you have the pure gold in your pocket, you would not care who said it was *fishy*, for you are ready to have it tried in the crucible; but if it is a *counterfeit* you will by all means shun the fire-test. You should be careful to "Heat not the furnace for your friend so hot that it may scorch yourself."

But this is not all of the conspiracy to muzzle criticism of your methods and nostrums. In view of my engagement at the recent Pan-American Medical Congress, your most influential mouth-piece, the New York Recorder, lent its aid, Sept. 3d, in magnifying the cause and consequences of my arrest, saying that I had been "held under heavy bonds," and in thus returning to its vomit, of course, extolled your wonderful Cure for Consumption!

For another malevolent and cowardly performance I have the proof in the Cincinnati Enquirer, Aug. 27th, under big head-lines, "Dr. Reeves arrested for sending a postal card reflecting on Dr. Amick." A copy of this paper with a huge hand, drawn with pen and ink, and finger pointing to the sensational paragraph, was addressed to "The Chairman of the Committee of Arrangements of the Pan-Congress;" and in this publication it was stated that "Dr. Reeves *was* to have been a leading figure" at the Congress. Dr. Adams, the high-toned gentleman who had thus been addressed by a scoundrel, preserved the paper and delivered it to me with his scorn of the base spirit that prompted its use.

God knows I wish you no harm, neither disappointment in any of your honorable endeavors; but it certainly cannot be a surprise to you that after having gone so far out of the way of your former professional friends who had given you their confidence and assured you of their hopes for your future in the profession, you should now receive the reward commonly accorded to quacks and nostrum venders; and it must be a sore trial, notwithstanding the great depths of your apostacy, for you now to receive the cold-shoulder of your high-minded and justly distinguished professional neighbors. In other words, what return have you made your Alma Mater, who clothed you with her honors? What use have you made of the talents given you? Truly, for a "mess of pottage" you have sold your birth-right in an honorable profession and become a stranger in the land of your kinsmen.

I am not yet "three score and ten," nor am I "a patriarch," as your mouth-pieces have reported, but I am old enough, probably, to be your father; yet you have sorrowed me inexpressibly by your desperate resort to suppress an inquiry which you would have "all the world and the rest of mankind" believe you heartily encouraged. Why did you not—instead of coming to Chattanooga—go into the great Cincinnati Hospital with your claim of a cure for consumption, there ask for any number of beds for trial cases, and then call the great doctors of your city to come witness the triumph of your so-called Chemical Treatment? Why have you not gone before some of the learned societies with your cure? Indeed, why did you not go to the Pan-Congress and there convince the multitude of your grand discovery of a cure for consumption?

And why, if you are an honest man and a Christian, have you appealed to the advertising columns of the secular press to prove by extravagant reports the value of your treatment and claim to immortality in the history of American medical quackery?

Should a cure for consumption, worthy of the name, shun the most searching inquiry into its claims? Would it require newspaper advertisements cunningly devised to attract attention of the sick, while thousands upon thousands of the very flower of the population are perishing from the want of a successful treat-

ment of the dreadful malady? Seeing the endless deceptions that have been perpetrated by quacks and vile pretenders in medicine upon this most pitiable class of invalids, ought not the discoverer of a sure cure for consumption have charity and compassion rather than malice for the incredulous? Should he not have liberality of mind and largeness of soul equal in extent to the whole world's obligation and praise, which he would receive, for his priceless gift to mankind? Should his thirst for money drive him into the courts against a disbeliever in his claims of a great discovery? Seal his heart, blind his eyes, and make deaf his ears to the cries for help that come up from pleading hearts for life and health all over the world? Nay, verily.

Are you not familiar with the appalling fact that tubercular consumption in the United States kills 150,000 people annually, or more than three times the number of the population in Chattanooga and its suburbs? That every hour of the day and night, not less than 17 persons fall victims of this most insatiable destroyer? And is all this suffering and destruction of human life—all this loss of wealth to the country—due and chargeable to your demand that every *fifteen shilling's* worth of your nostrums shall bring you *fifteen dollars* in hard cash? that either the "ducats" or the "pound of flesh," shall be delivered? Or, because the medical profession has refused to recognize your claim, and, in the name of medical truth, denounced you and your nostrums?

Indeed, is the truth not stranger than fiction, that your wonderful cure should have been on the market for two years, yet at this late date require unauthorized names to your indorsements, and all sorts of newspaper advertisements—including criminal arrests, damage suits, etc.—to keep the thing afloat before the general public? Let your conscience answer, if you have such a monitor.

Yes, you have made a record in Chattanooga and the country round about that will long outlive your nostrums. It is festooned with the damp of death and the failure of your high-sounding promises—all for money—to save the dying. Even while the angel of death was hovering over the victim, your merry dance went on in the Chattanooga Times to the tune most deceiving and heartless,

that the dying man was "improving rapidly under Dr. Amick's Chemical Treatment"—the special music for the occasion having been furnished by the little corporal with his dandy nose-glasses, who was the "local agent of the company. This distinguished artist will not soon forget his experience in Chattanooga, I am sure.

I have in my possession an undeniable proof of your methods and perfidy. It came to me through the family of the dead man—your own trusting patient above referred to as one of the victims of tubercular consumption in Chattanooga, notwithstanding your great discovery of a cure. It is a letter over your own signature addressed to the late Dr. M. L. Long of this city, and bears date Cincinnati, July 5th, 1893, in which you had the hardihood and unmitigated gall to say: "The notoriety given me by the wide comments on the part of the secular press has caused me much annoyance, subjecting me to the unpleasant criticism of being an advertiser, etc." Verily, this is Satan rebuking sin. What will the Chattanooga Times, people, also the News people say? How much had you to pay them for boosting your stock in trade?

By your own language you have admitted it is discreditable for a physician to become an "advertiser;" yet while the words are falling from your saintly lips, lamenting the "unpleasant criticism," you and your company are running your hands deep down into your pockets to pay the newspaper men for the "notoriety" which you would have the public believe you do not seek. *Falsus in uno, falsus in omnibus*. Such rank hypocrisy cannot long run unwhipped.

By your consummate foolishness you have put a storm in motion you cannot quell. Already I have enough testimony, voluntary and pointed—enough to cover all the phases of your duplicity—from the mouths of your own witnesses to "wipe the very earth" with your so-called Chemical Treatment.

Besides documentary proofs that are pouring in from all sections of the country, induced by your violent assault upon me, and unmitigated brass, I have a sad case against you near at home: A poor woman, who at the time of commencing your "treatment" was able to attend to the affairs of her household, had read in the Chattanooga Times of your wonder-

ful cures, and begged her physician to order for her the "free trial treatment." It came promptly and its use begun at once, but the clinical history was as short as it was truly sad. The rectal injections—a part of the plan of treatment—started a diarrhœa that could not be controlled, and she died on the morning of the sixth day after commencing the use of your wonderful discovery! Comment is unnecessary.

I have the proof also that a dying patient said to his physician: "Write to Dr. Amick and tell him his medicines hurried me off." Of the six "test cases" in this city, one is already dead; and it really did seem that your medicines "hurried" him off. This case at St. Vincent's Infirmary had been under your treatment several weeks before he was admitted and his poor sisters paid you your price for your nostrums. Of the remaining five cases, three have quit the treatment, believing after two months' trial that it did no good, if not harm; the remaining two, if report be true concerning them, are making *progress*, and the "outcome" is not far off. Already one can nose it on the street, as Hamlet did the body of Polonius.

The very artistic shading given your "treatment" in a recent number of the Chattanooga PRESS was a becoming tribute to your wonderful discovery. The negro patient and his negro doctor may serve you well for purposes of deception as advertising material, but you ought not to have disgraced the Tri-State Medical Society with the shine of your quackery.

Did you not feel a bit slighted that Prof. Whittaker, of Cincinnati, should go before the Association of American Physicians at the meeting in Washington, last May, with his learned paper on the treatment of tubercular consumption without even the mention of your great name and wonderful discovery? And have we here another illustration of the old adage that "A prophet is not without honor save in his own country?"

Can you tell who concocted the alleged London dispatch sent out from New York, Sept. 8th, saying your secret nostrums had been "Scheduled for consideration at the International Medical Congress in Rome?"

We have near Chattanooga a fine qual-

ity of *blue mud* which would answer well for monumental purposes; and if you will do me the honor to send to this city the party of "prominent physicians of England, France and Germany" named in the above mentioned dispatch, who are to "personally interview the discoverer" in Cincinnati, I will have a cast of the group made and plant it squarely on Lookout Mountain to signalize my faith in your Cure for Consumption, and appreciation of your high professional character. If you will kindly send me your visitors, I will entertain them in a manner becoming your Royal Highness.

Why don't you have the Associated Press tell the world that Koch has accepted your brilliant theory, accepted your Cure for Consumption, and invited you to Berlin? Such a reasonable story would go along very well with the London dispatch, that the Congress at Rome will discuss your "discovery," and a special deputation will make you a visit in Cincinnati.

"The virtuous nothing fear but life with shame."

But why not give us a little rest from the farce, seeing—unless you are both physically and morally blind—that the search for some new and successful medicinal agent or means for the cure of tubercular consumption is as active to-day as ever before, notwithstanding your alleged discovery? You might, perhaps, make a successful sally for a few months at least with the newest discovery, just out, namely, dog's Blood serum. There is some sense in it, and Juettner might aid you in working the matter up for all it is worth.

But really, my dear Doctor, I have not the least pleasure in the performance which you have so very foolishly put on the bill-boards to your ineffaceable shame and the disgust of every honorable member of the profession. With the drop of the curtain upon the last act of your Comedy of Errors, there will be a fearful shaking of dry bones over your folly in trying to bulldoze the whole medical profession of this country. Verily, "The fool hath said in his heart, there is no God."

Finally, I submit the following itemized statement of my account against you

and your company, with all proper credits duly acknowledged:

Dr. W. R. Amick and his Chemical Co.

To Dr. James E. Reeves, Dr.
Aug. 26th, For sending out in the press dispatches without cover or authority of A. S. Ochs, Esq., the only authorized Press Agt. in Chattanooga, a sensational report of my arrest.....\$25,000 00

For same furnished the Cincinnati Enquirer, and a copy of that newspaper—with villainous pen and ink marks—addressed to the Chairman of the Pan-American Medical Congress, Washington.. 10,000 00

For same to the N. Y. Recorder 5,000 00

For "special" to the Evening News, Washington, announcing damage suit for \$25,000, 5,000 00

For the use of my name generally in advertising your nostrums..... 10,000 00

\$55,000 00

Cr. By 1 postal card sent to "Prof." Juettner..... 5 cents

Bal. due me on account. . \$54,999 95

And now as a parting blessing, let me "in the interest of medical truth" commend to your affectionate embrace the following couplet:

"Dare to be true, nothing can need a lie:
A fault which needs it most grows two thereby."

Verbum sat.

With all due respect,

Your ob't. servant,

JAMES E. REEVES.

P. S.—Please be good enough to preserve this letter for publication in my Memoirs. For the front-piece of the volume, I should be glad to have your picture—cabinet size.

On account of your morbid sensitiveness in the use of the mail, I send this letter by express, charges pre-paid; and may the Lord have mercy on you!

You see, Dr. Amick has gone a little in advance: that is what makes him a quack. He has stepped a little in advance and they have got him where they want him to be so they can fire at him in the back.

Now, don't you see the absurdity of the thing. They are claiming that this man has done wrong and is a quack. They say he ought to have made his cure public and given it to the world, and yet, because he undertook to make known to the world that he had it, he is a quack. In the first place, he ought to make it public and is a miserable customer because he didn't do it; and in the next place he is a miserable sinner because he has made it public to a certain extent. It occurs to me there is something rather absurd in the standpoint of the profession upon these questions.

Well, who is to blame if consumption does kill 150,000 people in the United States? Is a man to blame, is he a quack, a fraud, a scoundrel, because he tries to arrest the march of that awful enemy of human life. I should think on the contrary, if he can save one per cent., check this thing one per cent. of cases, that he ought to be regarded as a benefactor of his race instead of being maligned and libelled as a quack.

He is blamed because he wants compensation for the time that he has spent, for the talent that he has spent, for the money that he has spent in discovering this cure. They are mad at him because he wants \$10.00 for a set of this treatment, and say he wants a pound of flesh!

Yes, he has made a record in Chattanooga, and he has probably kept some of these sensitive gentlemen from picking up some of this medical practice and, therefore, he has lugged off a pound of flesh, and that flesh has just worn right off from over their hearts because they lost that much of their medical practice.

They have tried to show several times in the proof that that Hebrew, as they call him, with the nose glasses, was the agent of somebody except that he was reporter for the Times. The nose-glassed Hebrew seems to have been a right lively bee under some of their jackets.

You see, gentlemen, he is writing to a man who has never published one solitary word of advertising matter in his own name. He is writing to a man who has a right to advertise as much as he pleases, as the Court has told you, where he pleases, how he pleases; he is writing to a man, shown by the whole record to be a man of high standing in his profession, against whom he says he has no malice in his heart and had none at the

time when he wrote the communication to him. If there is not malice in every line of that letter I don't know what the definition of malice is. I will take it out of my dictionary and destroy the book. Like some savages who were told that there were bacilli in the water that they drank. They said it was no such thing. The demonstration was made to them with the microscope, the instrument which the defendant wields so ably and to such good purpose sometimes; the demonstration was made to them that there was life in the water, and what did they do? How did they answer that argument? Just exactly upon the same theory that these gentlemen are answering our claim that this remedy is superior for consumption. They smashed the microscope. And whenever a great man makes a discovery in medicine or any other science the medical profession comes along and undertakes to deny it, and if they cannot successfully deny it, cannot make people believe their denial, they try to smash the man, smash his reputation, smash his business. Read to them the very Bible of truth in medical science, and if it was advertised, if it was not within the line of their code of ethics, they would smash the Bible, they would burn it, they would destroy it, because, as I have said before, they are simply blinded by their zeal for their code of ethics. I understand that they do, sometimes, let a fellow say that he has moved his office. Once in a while I notice that a doctor has moved his office, and he forgets to take out his removal card. Of course he is not a quack because he simply forgets to take out his removal notice; I reckon he isn't to blame; but the code of ethics must be observed if the heavens fall. If a man tells a lie in a hack he will tell a lie in an omnibus.

There was no proof brought in here, and furthermore there could have been none, that Dr. Amick had ever had anything to do with Dr. Reeves' arrest for violation of the postal laws of the United States. There could have been no proof of it, for he had nothing whatever to do with it.

I asked one of the doctors here yesterday if a man might not have consumption in its earlier stages and that disease complicated with some other, qualified by some other disease, and the man be carried off by that other disease the ap-

proximate cause of his death. Here they show that the cause of that woman's death was not the cure but the way that it was administered. I am sorry they killed the woman alluded to in the letter, but I don't want them to hold us responsible for all the people they send to glory.

Well, Dr. Reeves is beginning to admit that some good has been done; but after all he has discovered that some people do die—must die.

I think that some of the doctors show that a great many of their patients make progress toward glory even when they don't use the Chemical Treatment. Great Cæsar! Men have died after taking whisky and do you mean to say that whisky is not a good thing?

That negro doctor was one of their witnesses here upon the stand yesterday. If a negro doctor is not good enough for their purposes outside of this court house, then they ought not to lug him in as a witness.

He forgot to mention that Dr. Whitaker is one of that class that just simply thinks that Amick is one that he wants to wants to help out of the country, out of the world if he can.

You see he is accusing us of going to Rome to send out bogus dispatches coming from Rome. Tries to make it appear that Dr. Amick sneaked over there and sent that dispatch to New York and got back in time to hear Dr. Whitaker read that paper.

Truly, we have here in Chattanooga a very fine quality of cheek that would answer very well for monumental purposes.

Dr. Reeves is a good entertainer. I give him credit for that fact, because I know him.

But he is not even willing we should tell that we had sued him. It was a matter of public record. The newspapers told it and we were not to blame for it.

That letter I should not have read at such length if it hadn't been for the request of Dr. Reeves that if I read from it at all I should read the whole of it. I would rather lose the force of a part of my speech than to do him any injustice and make him feel as if I were trying personally to persecute him as well as to sue him.

I want this verdict. I believe that the plaintiff in this case is entitled to this verdict. I believe that this man has

been maliciously inclined toward Dr. Amick ever since Dr. Amick became famous on account of his discovery of a cure for consumption. He says that he is a specialist. He says that he considers himself an expert. He has the natural jealousy of an ambitious man trying to climb up to fame. It is not unnatural that he should be envious. It is not unnatural that he should be ambitious.

The history of Dr. Amick and his Chemical Cure, as developed in this law suit, has been the history of the world. As I have said before, it has been the history of every man who has undertaken to give humanity an advanced position in life. Our Savior announced to the world a new religion, and what was His reward? They crucified Him. Christopher Columbus discovered America, and what was his reward? They sent him to Spain in irons. Socrates took an advanced position in philosophy, and they made him drink poison to his death. Galileo had the audacity to proclaim that the world moved in a regular orbit and they put him in prison and put him in irons. As I have said, Jenner was persecuted, Harvey was persecuted; every great discoverer of medical truth has been persecuted; every man who has had the temerity to try to add some little thing to the sum of human knowledge has been persecuted, and from now until the day when Gabriel sounds the signal for the last resurrection of mankind, every man who dares to proclaim to the world a new and a great truth will be persecuted; and, gentlemen, in the interest of that humanity about which we have heard so much here, in the interest of that scientific truth of which we have heard so much here, in the interest of the sick and the dying, I beg you not to say that a man shall make a discovery in medical science at the sacrifice of his reputation and of his property and of his personal standing in the community. The verdict which we seek, we are entitled to, I honestly believe, and, gentlemen, I know full well that you will discharge your duty as honestly as I have tried to discharge mine, and, I hope, with a great deal more ability. I thank you.

CHARGE OF COURT.

Hon. C. D. Clark, District Judge.

Gentlemen of the Jury: This is an action of libel, brought by the plaintiff against the defendant to recover damages for the alleged defamation of his professional character. You have been engaged, now, a day and a half in the investigation of the case. The facts have been so much referred to, and so much before you, that I do not deem it necessary to charge you at such length as might be proper in a case which had consumed less time.

A libel, as defined by the Code of this State, is "the malicious defamation of a person, made public by any printing, writing, sign, picture, representation, or effigy, intending to provoke him to wrath, or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse." And what it takes to constitute a publication is thus defined: "No printing, writing, or other thing is a libel without publication; but the delivering, selling, reading, or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated to one or more persons, or to the party libelled, is a publication thereof." And I give you, in instruction, that definition of a libel as well as that definition of what it takes to constitute publication.

Now, before coming down to the actually disputed points on which you are to pass, it may save some confusion and save some trouble to make a few general observations in respect to this case as a whole and the ruling on the evidence, because there is much testimony that has been put before you and much offered that has been excluded.

The letters and cards introduced by

the defendant, as coming to him from physicians in answer to the inquiry put upon the cards have been allowed to come before you for the single purpose of reflecting on whether or not the defendant, in good faith, exercised reasonable care and caution, and as bearing on the plea of justification, about which specific instructions will be given you further on. The Court has excluded, as far as could be done, the evidence of what the rules of the American Medical Association or any other Medical Society are, because they were considered immaterial and as having no bearing on this law suit. The Medical Society and the Medical Society's rules may be important as promotive of the interests of the medical profession, but they are not rules of law, and no man is to be denied any legal right because he does not join a society of that sort, nor because he does not conform to the rules of such society. When his professional reputation comes under examination in the court, it is to be determined by the law that governs any other relation in life, and not by any code of rules adopted by any Medical Society; and for the same reason you will disregard, as immaterial, the testimony of all physicians and each physician who undertakes, so far as they do so, to characterize another physician as a quack because he does not conform to the rules of the society. As stated, this is not law, and whether he is a quack, or whether his conduct is reprehensible, is to be determined by the law and not by any such standard as a code of that sort, or by an opinion expressed adversely to a man as the result of disobedience to that code.

For a similar reason the Court has excluded from you evidence of the fact that other physicians and other medical firms or concerns publish their medicines. Persons have a right, as a matter of law, to publish anything they choose in regard to a medicine, or to publish, as they

desire, their profession or calling, and they commit no violation of law, and they do nothing legally wrong in doing so. The question of the responsibility growing out of making a false and fraudulent publication, intended to operate on the public, is another question. There is nothing wrong in making the publication. The fact that a man goes into print with his professional reputation and conduct, or with a medicine which he professes to have discovered, is not illegal, and what responsibility may grow out of the fact that he makes a false publication and deceives the public is a question that we will investigate further on.

The letter, written since this suit was brought, and since the publication by the defendant, Dr. Reeves, to the company, has been admitted, not for the purpose of supporting the charge of a libel, but for the sole purpose of its effect, if it has any effect in your judgment, in showing express malice on the part of the defendant Reeves, and as bearing alone upon the question of privileged communication, about which instruction will be given further on.

Now, then, that much said, and we come down to this publication and the issues which have been made in the pleadings. The plaintiff brings the suit and alleges that the publication set out in the declaration is a malicious and false defamation of his professional character, in consequence of which he has suffered in his professional reputation and in his business. The general issue is put in, but it is not controverted in the proof but what publication was made as stated in the counts except the last. But the defendant, by his plea, says, in the first place, that the publication as made is true, and that, for that reason, the plaintiff has no right to recover. The effect of that plea is to say that "I made the publication and I stand by its truth."

And I instruct you that, regardless of the character of the publication, however severe it may be, if you are satisfied, by a reasonable preponderance of the testimony, that the publication as made was true, in substance and in fact, it is a complete answer and a complete defense to this suit: It is not necessary that every word should be proven literally as stated, but if in substance and fact the publication is shown to be true, that is a complete answer to this law suit, and if you find that way you have nothing else to inquire about. A finding of that kind would end the case and your verdict should simply be for the defendant.

This publication, it being the duty of the Court to construe it, is libelous *per se*, and unless the truth of it is shown, other things aside, the plaintiff would be entitled to recover, and to recover such general damages as are the necessary and natural result of a publication of that character, and of this you are, in your sound discretion, to judge as intelligent men. You will have nothing to do with the question of damages in the event you find the truth of the publication. That is the end. If, so far as the first issue is concerned, you find that the publication is not true, then, as stated, it would be libelous, and, other things aside, it would be your duty to assess damages. In determining whether it is true or not, you will look to all the facts and circumstances of the case; you will look to what was claimed for this cure on the part of Dr. Amick, or on the part of the company into whose hands he put the treatment, and of what use was made of it by the company with his knowledge and consent. When you have looked to what was claimed for it, as shown by the proof, then you will look to all the evidence, in like manner, which tends to sustain that claim, or to show that it was a false and fraudulent claim, and it is in that view that these physicians have

been permitted to state before you the result of cases tested by them. You look to that, and to every other fact and circumstance in the case.

Now, the libelous publication has been read before you a second time. The general purport and effect of the charge contained in that publication is that this remedy, called a chemical cure for consumption, is not what was claimed for it by Dr. Amick and his company, and that it was an imposition on the public. Putting aside the particular forms of expression and looking at the substance and body of the whole article, you will find that its general purport is that the cure was not a cure, as claimed, and that it was an imposition on the public for the purpose of obtaining money from the suffering community. That is the question you have to decide. And in determining what is meant by the use of the methods of quackery, or by other phrases and terms in the publication, you are to look to the subject which was then up for discussion, and about which the publication was written. The ordinary definition of a quack is "a boastful pretender to medical skill or knowledge," and in respect to any question it would be "a man making professions that were unfounded, boastful and extravagant;" but you are not to consider any language in the publication in any abstract sense, but in reference to the subject about which it was written, and which, at the time, was up for discussion, and you are to give to the publication the meaning given in its ordinary acceptance, and as thus understood; such meaning as men of ordinary intelligence would give in receiving the publication, not in the abstract, but in regard to the subject about which it was made.

The publication was in regard to this Amick Chemical Cure, the uses being made of it, and its effect and virtue as a remedy, and all language is to be con-

strued with reference to that. So that, having done that, if you find the publication to be true, that is an end of the law suit. But if you find for the plaintiff on that issue, that the truth of it has not been shown, then another inquiry will become necessary, and that is whether the publication was justified under the circumstances and on the occasion when made, and that is the second issue.

When the plaintiff put forth and advertised the claim that he had discovered a new cure for consumption, and invited public patronage, he thereby made his discovery and his claim so far a matter of public interest as that it was proper and lawful for physicians to investigate it and to express an opinion about it and to criticise it in fairness and candor, to speak through the papers to the public, giving their opinion of the remedy, and whether it had the virtue which was claimed for it and whether it did not have. This is called a conditionally privileged communication; and what is meant by its being conditionally privileged is that it shall be made in good faith and without express malice and in the discharge of what the defendant believed was a duty which he, as a physician, owed to the public. That is where it is conditional. A man may not take advantage of the occasion for the purpose of giving expression to his malice; and I should have said to you, that if the defendant published nothing except the truth, on the first issue, it is wholly unimportant whether he published it maliciously or not. If it is true it is not libelous, or rather it is a complete answer to the charge. But it is important, on the second issue, that it is privileged only on the condition that it is done upon a reasonable and well grounded belief in its truth, and in good faith without malice. In determining whether that is so or not, you may look to any motives, or the absence of motives, which may have actuated the defendant in the publication;

whether he took reasonable care and precaution to investigate the claims that were made for this cure and the effect of the cure before making the publication, and it is with this view that these cards of inquiry and the answers of physicians have been allowed to go before you. Did the defendant Reeves, after reasonable investigation and upon a well grounded belief that the remedy was not what was claimed for it, and that it was an imposition on the public, make the publication in good faith for the purpose of informing the community and without express malice? If so, then the publication would be privileged; otherwise, it would not.

In regard to the publication in the newspaper called the "Evening Press," so far as that may bear on the case: If an interview was had with a reporter for the paper, a mere verbal interview without more, and that was not published, that would not be a publication in the sense of the law, although it may have been intended for publication. If, however, under such circumstances, it was set up in print and was shown to persons, one or more, in that form, with the knowledge and sanction of the defendant Reeves, or with his approval, then that would be a publication within the sense of the law.

You will now take the case, and if, after having given to the publication its fair and ordinary meaning, such as would be given to it by persons reading the paper, you are satisfied by a preponderance of the testimony that the publication made by the defendant is true, then your verdict will simply be for the defendant without more. If, however, you find that issue in favor of the plaintiff, then you will inquire whether or not the defendant Reeves, in good faith, without malice and upon reasonable grounds and in the discharge of what he believed was a duty that he owed to the public as a physician, made the publication, and made it in reasonably temperate and moderate lan-

guage, although the terms may be severe; if you believe that, then your verdict should be for the defendant. If, however, you find both issues in favor of the plaintiff, then it will be your duty to assess the damage. You cannot allow any damages (if you allow any at all) by reason of any failure to sell this chemical cure, because the proof shows that it is the property of a corporation and it is not a party to the law suit. Your assessment of damages would be for such injury as is done to Dr. Amick, the plaintiff, in his professional reputation alone, and such

damages as naturally and necessarily would result to that reputation from a publication of this character. The question of malice, of course, or its existence or non-existence, can always be looked to on the question of damages and the amount that would be assessed.

And last, whether you find for plaintiff or defendant on one or both issues is the question about which the Court does not mean to make any intimation by anything that is said. That is a fact that the Court leaves for you to pass on, and you now take the case.

VERDICT OF THE JURY.

The Jury, after being in retirement about ten minutes, returned the following verdict:

"WE, THE JURY, FIND FOR THE DEFENDANT."

